Judge Drummond
Appeals
Judge Clifford 16-584
Dispatch

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~468~~ 229

JAMES WAGER AND ANDREW B. FALES, APPELLANTS,

vs.

AUGUSTUS O. HALL, ASSIGNEE OF LEONARD LAKIN, BANKRUPT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED DECEMBER 2, 1871.

Dec. 2. 1871

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1 United States circuit court for the western district of Wisconsin.

THE UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the seventh circuit and western district of Wisconsin, begun and held according to law, at the city of Madison, in said district, on the first Monday (being the fifth day) of June, A. D. 1871—present and presiding, the Honorable James C. Hopkins, district judge; F. W. Oakley, marshal; Frank M. Stewart, clerk—among other the following proceedings were had, to wit:

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, a bankrupt,
v.
JAMES WAGER, ANDREW B. FALES, AND LEONARD LAKIN. } In equity.

Be it remembered that heretofore, to wit, on the 13th day of December, A. D. 1870, came the above-named complainant, by his solicitors, Messrs. Finches, Lynde and Miller and filed his bill of complaint against the above-named defendants, as follows, to wit:

2

3 *Bill in chancery.*

To the judges of the circuit court of the United States for the western district of Wisconsin:

Augustus O. Hall, assignee of the estate of Leonard Lakin, a bankrupt and citizen of the State of Wisconsin, brings this his bill of complaint against James Wager, a citizen of the State of New York, and Andrew B. Fales, a citizen of the State of New York, and Leonard Lakin, a citizen of the State of Wisconsin, and thereupon shows that on or about the 8th day of January, 1870, the said Lakin, being a merchant and trader, filed his petition in the district court of the United States for the district of Wisconsin, under and in pursuance of an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," praying to be discharged from his debts; that afterwards, on the 2nd of February, 1870, he was, by the said court, declared a bankrupt; and thereafter, on the 4th day of March, 1870, your orator was appointed assignee of said bankrupt's estate; and at the same time an assignment of his estate, property, and effects, were assigned to your orator as such assignee; that under and by virtue of the act aforesaid, all his property, rights of property, and choses in action became and were vested in him as such assignee.

And your orator further shows that on or about the 15th day of December, A. D. 1869, the said Lakin was indebted to the said defendants Wager and Fales, and had been thus indebted, as your orator is informed and believes, for nearly two years previous thereto, in the sum of about three thousand dollars; that for some time previous to the day and year last aforesaid the said Lakin had been in embarrassed circumstances, and in truth and in fact at that date he was hopelessly insolvent; and with a view to give a preference to said Wager and Fales over his other creditors, he, the said Lakin, and O. A. Lakin, his wife, did make and execute, under their hands and seals, and deliver to
4 the said Wager and Fales, a certain mortgage bearing date the

day and year last aforesaid, and within four months before the said Lakin filed his petition in bankruptcy, as aforesaid, and about twenty days previous thereto, whereby the said Lakin and wife conveyed to them by their firm name and style of Wager and Fales, all those pieces or parcels of land situate, lying and being in the town of Brodhead, county of Green, and State of Wisconsin, and known and distinguished as the north one-third of lot one, in block one hundred and one; also all of lot three, in block one hundred and one; also the north half of the south half of block seventy-nine; also the east half & the southwest quarter of block two hundred and six; also all of block one hundred and forty-two, all in said town of Brodhead and county of Green, and State of Wisconsin, according to a map thereof recorded in the office of the register of deeds in and for said county; that said mortgage was upon the condition that if the said Lakin would pay the said sum of three thousand dollars and interest thereon, that is to say, $600 on or before six months from the date thereof, $600 on or before twelve months from the date thereof, $600 on or before sixteen months from the date thereof, $600 on or before twenty months from the date thereof, and the remaining $600 in twenty-four months from the date thereof, with interest upon all payments at the rate of ten per centum per annum, payable annually, which said mortguage was stamped with a three-dollar revenue stamp of the United States, and said mortgage was duly recorded in the register's office of Green County, in volume "2" of mortgages, on page 607.

And your orator further shows, charges, and insists that at the time the said defendants Wager and Fales procured the said mortgage from the said Lakin they had reasonable cause to believe that he, the said Lakin, was insolvent, or contemplated insolvency; and your orator also charges and insists that the same was made with a view to evade the said bankrupt act, and is absolutely fraudulent and void, and ought to be given up for cancellation or be discharged of record.

Your orator further shows that said mortgage was executed out of the ordinary course of business of the said Lakin; the debt thereby secured having been past due for a long time, and the mortgage to secure the same having been given upon a long and unusual time, the same is, in pursuance of said bankrupt act, prima facie fraudulent and void.

And your orator further shows that said mortgaged premises have been surrendered to him as assignee of the said bankrupt, but the same cannot be sold to advantage of the estate while the mortage remains thereupon as a colorable lien.

And your orator, therefore, prays that said mortgage may be declared fraudulent and void, and that the same may be given up and cancelled, or that said defendants Wager and Fales may be required in due form of law to execute and deliver to your orator a satisfaction, release, and discharge of the said mortgage, so that it may be discharged of record, or in lieu, that the decree thus made may stand in lieu of such discharge, and that the said Wager and Fales may be debarred from proving up their said debt, or from participating in the distribution of the said bankrupt's estate, and that the said defendants, Wager and Fales, their agents, servants, and attorneys may be enjoined and restrained from assigning or transferring said mortgage, or from proceeding to foreclose the same at law or equity, and that your orator may have such further and such other relief as shall be agreeable to equity.

May it please the court to issue the writ of injunction out of and under the seal of this court, therein and thereby enjoining the said

6 James Wager and Andrew B. Fales, their agents, servants, and attorneys, from assigning or transferring said mortgage, or from proceeding to foreclose the same at law or in equity.

And may it also please the court to grant its writ of subpœna, to be issued out of and under the seal of this court, therein and thereby requiring the said James Wager and Andrew B. Fales, and the said Leonard Lakin, on a certain day and under a certain penalty therein to be named, to be and appear before this court, and then and there to answer this bill of complaint, and to stand to and abide by such order and decree as may be made in the premises, and that your orator may have such other and such further relief as shall be agreeable to equity and good conscience. And, as in duty bound, he will ever pray, &c.

AUGUSTUS O. HALL,
Assignee, &c.

FINCHES, LYNDE & MILLER, *Solicitors.*
A. FINCH, *of Counsel.*

EASTERN DISTRICT OF WISCONSIN, *ss:*

Augustus O. Hall, assignee, &c., being duly sworn, on oath saith that he has read the foregoing bill by him subscribed, and that he knows the contents thereof, and that the same is true, except as to those matters stated upon information and belief; and as to those matters he believes it to be true.

[L. S.]

J. M. MILLER,
Clerk U. S. Dist. Court, East. Dist., Wis.

DECEMBER 13, 1870.

This day came the defendants, James Wager and Andrew B. Fales, by their solicitors, Messrs. Cassoday, Merrill and Dixon, and filed their appearance, as follows:

7 *Appearance of defendants.*

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt,
against
JAMES WAGER AND ANDREW B. FALES, DEfendants and mortgagees. } In equity.

We hereby appear as attorneys for James Wager and Andrew B. Fales, the defendants and mortgagees in the above-entitled cause, and we hereby waive service of subpœnas on said defendants, or either of them.

Dated Dec. 12th, 1870.

CASSODAY, MERRILL & DIXON,
Attorneys for said Defendants.

FEBRUARY 4, 1871.

This day came the defendants, James Wager & Andrew B. Fales, by their attorneys, Messrs. Cassoday, Merrill & Dixon, and filed their answer to the complainants' bill of complaint, as follows:

Answer.

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
against
JAMES WAGER, ANDREW B. FALES, AND LEONARD Lakin, defendants.
} In chancery.

The answer of James Wager and Andrew B. Fales, two of the above-named defendants, to the bill of complaint of the above-named plaintiff.

These defendants, respectively, now and at all times hereafter, saving to themselves all and all manner of benefit or advantage, of exception or otherwise, that can or may be had or taken to the many errors,
8 uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally on oath answering, say, that they have not, nor have either of them any knowledge or information sufficient to form a belief as to whether the said Leonard Lakin was, on the said 15th day of December, A. D. 1869, in embarrassed circumstances, or whether he was in truth or in fact, at that date, hopelessly insolvent or not.

And these defendants, further answering said bill of complaint, deny that they, or either of them, on the 15th day of December, A. D. 1869, or any other time prior to, on, or about January 10, 1870, had any knowledge or information sufficient to form a belief that he, the said Leonard Lakin, was in embarrassed circumstances, or insolvent or bankrupt, or acting in contemplation of insolvency or bankruptcy.

And these defendants, further answering said bill of complaint, upon information and belief, deny that the said Leonard Lakin executed the mortgage mentioned in the said bill of complaint, with a view to give a preference to these defendants, or either of them, over any other creditors of him the said Leonard Lakin.

And these defendants, further answering said bill of complaint, deny that these defendants, or either of them, at the time of procuring said mortgage, or at any other time prior to, on, or about January 10, 1870, had reasonable cause to believe, or any cause to believe, or did believe that he, the said Leonard Lakin, was insolvent or contemplated insolvency.

And these defendants, further answering said bill of complaint, deny that these defendants, or either of them, at the time of procuring said mortgage, or at any other time prior to, on, or about January 10th, A. D. 1870, had reasonable cause to believe, or any cause to believe, or did believe that he, the said Leonard Lakin, was in embarrassed circumstances, or bankrupt, or contemplated bankruptcy.

And these defendants, further answering said bill of complaint,
9 deny that said mortgage was made or procured, or taken, or received with a view to evade the said bankrupt act, or any of the provisions thereof, or that the same is fraudulent, or void, or ought to be given up or cancelled, or be discharged of record.

And these defendants, further answering said bill of complaint, deny that said mortgage was executed out of the ordinary course of business of him the said Leonard Lakin, or in any unusual manner, or for any

unusual time, or that the same is in pursuance of the bankrupt act, or any other act, prima facie fraudulent or void.

And these defendants, further answering said bill of complaint, say that these defendants were frequently informed, prior to the 15th day of December, A. D. 1869, and had verily believed, until on or about the 10th day of January, A. D. 1870, that the said Leonard Lakin was perfectly solvent and responsible, and had sufficient property to pay all his debts and liabilities, and that said Leonard Lakin was worth more than ten thousand dollars over and above all his debts and liabilities and exemptions, and that he would for years continue to do a prosperous, successful, and paying business as a merchant, at Brodhead, aforesaid, and be able to pay all his debts, including the indebtedness to these defendants, out of debts due him from other parties, and the profits of his business as a hardware merchant, without in any way affecting his said business, or resorting in any way to the real estate described in said bill of complaint, or any part thereof. All which said matters and things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray that said bill may be dismissed, with their reasonable costs and charges, in this behalf most wrongfully sustained.

JAMES WAGER.
ANDREW B. FALES.

CASSODAY, MERRILL & DIXON,
Solicitors for Defendants.
J. B. CASSODAY,
Of Counsel, Janesville, Wis.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

10 James Wager and Andrew B. Fales, each being duly sworn, each for himself on oath saith: That he has read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be upon information and belief; and as to those matters he believes it to be true.

JAMES WAGER.
ANDREW B. FALES.

Subscribed & sworn to before me this 11th day of January, A. D. 1871.

H. J. KING,
Register in Bankruptcy.

At a special term of the circuit court of the United States of America, for the seventh circuit and western district of Wisconsin, begun and held according to law, at the city of Madison, on the second Monday (being the 13th day) of February, A. D. 1871, and on the second day of said term, to wit, on the fourteenth day of February, A. D. 1871—present, the Honorable James C. Hopkins, district judge, presiding—the following proceedings were had, to wit:

AUGUSTUS O. HALL, ASSIGNEE, &C.,
vs.
JAMES WAGER, ANDREW B. FALES, AND Leonard Lakin. } In equity.

This day came the parties by their counsel; the complainant by Messrs. Finches, Lynde and Miller, and the defendants by Messrs.

Cassoday, Merrill and Dixon; and by consent of parties this cause is continued for the term.

11 At a stated term of the circuit court of the United States of America, for the seventh circuit and western district of Wisconsin, begun and held according to law, at the city of Madison, on the first Monday (being the 5th day) of June, A. D. 1871—present and presiding the Honorable James C. Hopkins, district judge—on the twenty-second day of said term, to wit, on the 29th day of June, A. D. 1871, among other the following proceedings were had, to wit:

AUGUSTUS O. HALL, ASSIGNEE, &C.,
vs.
JAMES WAGER, ANDREW B. FALES, AND Leonard Lakin. } In equity.

This day came the complainant by his solicitors, Messrs. Finches, Lynde and Miller, and on their motion for leave to file his replication as of the first day of May, A. D. 1871, it is ordered by the court that the complainant have leave to file his replication as of that date, and the clerk is hereby directed to file the same as of that date, when presented by complainant's solicitors.

And now, at this same term, to wit, the June term, A. D. 1871, and on the twenty-third day of said term, to wit, on the thirtieth day of June, A. D. 1871, the following proceedings were had, to wit:

AUGUSTUS O. HALL, ASSIGNEE, &C.,
vs.
JAMES WAGER, ANDREW B. FALES, AND Leonard Lakin. } In equity.

This day came the parties by their counsel, and the trial being concluded, the cause is taken under advisement by the court.

The following stipulation was filed by the defendant's solicitors:

12 *Stipulation as to testimony.*

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
against
JAMES WAGER AND ANDREW B. FALES, DEFENDANTS and mortgagees. } In equity.

We hereby stipulate that the testimony of James Wager, Andrew B. Fales, and B. F. Johnson, taken upon the part of said defendants, and Christopher Seeber, taken upon the part of said plaintiff, upon the petition of the plaintiff and answer of the defendants, in the district court of the United States for the eastern district of Wisconsin, be sent by the clerk of said last-named court to Frank M. Stewart, at Madison, Wisconsin, and read in the above-entitled cause, the same as though said testimony had been regularly taken in said cause after issue joined,

subject only to the right to object on the ground of irrelevancy, incompetency, or immateriality.

Dated December 27, 1870.

CASSODAY, MERRILL AND DIXON,
Attorneys for Defendants.
FINCHES, LYNDE AND MILLER,
Solicitors for Complainant.

The following testimony was received and placed on file, and read upon the trial of this cause on behalf of the complainant:

13 *H. B. Stewart.*

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
against
JAMES WAGER, ANDREW B. FALES, AND LEONARD Lakin, defendants.

H. B. STEWART, being first duly sworn as a witness for the plaintiff, deposes and says:

I am 52 years of age. I am a broker or money-lender. My residence is in Spring Valley, just over the county line from Brodhead. I do business in Brodhead. I have been in the vicinity of Brodhead for the past 12 years. I know Leonard Lakin. I have known him, I should think, since 1860 or 1861—since he came to Brodhead to do business.

Ques. Had you been observant of the manner in which he conducted his business for two years prior to his failure?

Ans. I had, somewhat.

Ques. What was the general reputation of Lakin for solvency during the six months previous to his bankruptcy among the business community at Brodhead?

Ans. I heard a good deal of talk among business men that he had a good deal of paper sent there for collection that was protested and not collected.

Ques. Was he regarded as solvent during that time in the business community there?

Ans. I think he might have been by some, but the large portion of them did not consider him solvent.

Ques. What was his reputation for solvency so far as you knew during that period?

Ans. If I was giving my idea about it, I should say people did not generally think he could last long during that period; that he could not continue long in business.

Ques. Was there much of his paper that went to protest during that period?

Ans. I heard of considerable through the express office, and
14 I had some myself that I could not collect.

Ques. Will you state what you had that you could not collect, and all the circumstances connected with it, and how the debt originated?

Ans. Mr. Lakin was school dist. treasurer for two or three years previous to the spring of 1869. In the spring of 1869 I was elected district treasurer to succeed him. I could not get the money of him, at the time

I took his books, that was due the district. The amount was about 1,136.00. All the way I could get along with him was to take his note, and I had some difficulty in getting security on his note. I would not take it without security. I finally took his note for a thousand dollars, with C. W. Mitchell and J. B. Blanchard as security, or rather it was a joint note. They being already on his bond, they signed the note to get along with it as easily as they could. Afterwards I collected this money a little at a time, until finally, a short time before his bankruptcy, I got the last, by persistent following.

Ques. How long before his failure did you get his note?

Ans. I should think in May or June. I can't say which, but should think the latter part of May.

Ques. What was his reputation for solvency for the year preceding his bankruptcy or solvency?

Ans. I should think it was poor, without any hesitation.

Ques. How extensive a business was he doing?

Ans. He was doing a good business. I don't know that I could tell what he was doing in a year. From $15,000 to $30,000, I should think.

Ques. How extensively in Brodhead was this defalcation of Lakin to the school fund known?

Ans. Generally.

Ques. How long had Lakin been a defaulter to the school fund?

Ans. A little before the first of January, 1869, he had had about $1,000 paid in to him by the town treasurer. There were a good many of the school orders waiting for money; several hundred dollars; perhaps over $1,000—probably over $1,000 00; and when this money was paid to him a little before January 1, 1869, instead of the money being left there to pay these bills, his clerk told me he went to Milwaukee, and used the money to pay his own bills.

Ques. Had you any other means of knowledge besides what the clerk told you?

Ans. Mr. Mack and myself were a committee to go to Chicago to purchase some school furniture and fixtures, I think, in November previous. We purchased the amount of somewhere from $300 to $400, agreeing to pay it by the 1st of January. The result was that I had to advance the money to pay that bill, Mr. Lakin going off with the school fund in that shape.

Being cross-examined, he testified as follows:

Ques. You own considerable property?

Ans. Some.

Ques. Real estate?

Ans. Yes, sir.

Ques. Which side of the railroad?

Ans. Both sides.

Ques. Business blocks both sides?

Ans. There is no business block on the south side that I am aware of.

Ques. Do you own any business blocks or lots for business blocks.

Ans. I own part of one.

Ques. In the spring of 1868?

Ans. I owned half of one.

Ques. Where was that situated?

Ans. On center avenue, on west side of street and north of railroad.

Ques. How far is it from the Lakin store now there?

Ans. Nearly 40 rods at right angles.

Ques. Do you know when Lakin bought that lot he built on?

Ans. Not definitely, but I suppose the spring that he built on it.

Ques. Did you have any talk about selling your lot to him for his store?

Ans. No, sir; I never did.

Ques. Did you talk with him anything about buying any other lot for his store than the one he did buy?

16 Ans. I think the year before we had a little talk about it, but nothing definite.

Ques. Where was the lot situated that you talked with him about his buying?

Ans. I think it is on the location where he built, or on the same block.

Ques. And you never talked with him about buying any other block?

Ans. Not that I recollect of.

Ques. Didn't you want him to build in a different part of the town than he did build?

Ans. I advised him that, which he undoubtedly sees now, that he had better build where his house was located.

Ques. Where is that with reference to his block?

Ans. It is perhaps 50 rods from where he did build.

Ques. How far is it from that block that you owned an interest in at the time?

Answer. It was across the street, a little farther up, close by the other hardware establishment.

Ques. How often did you advise him to build there?

Ans. I cannot tell you—once, perhaps.

Ques. Didn't you urge him pretty hard, Mr. Stewart?

Ans. I should think not. I am not in the habit of doing so. My impression now is that he asked my advice about it.

Ques. Did he advise with you about building the store?

Ans. Yes.

Ques. About the size of it, & so on.

Ans. No, sir; only about the location.

Ques. He continued in the hardware business—the retail store—during the time he was building the store—did he?

Ans. He did.

Ques. And you thought he did from $15,000 to $30,000 a year—did you?

Ans. I think they claimed that they did that; he and Hall together.

Ques. Was that your impression that they did that amount of business?

Ans. I should think that what he sold on commission, and what

17 he sold out of his store, he probably did do about that amount.

Ques. Did you have any claims against him except this of the school district?

Ans. Don't recollect that I did—any of any amount. I had many opportunites to cash his notes, but I did not feel disposed to do so during the last year that he was doing business.

Ques. Did you at any time?

Ans. Previous to that year; yes.

Ques. Is it not true that there was a little variance between you and Mr. Lakin during that year, 1868, or some portion of it?

Ans. I don't know that he felt any ill feeling towards me. I never did towards him, nor never had any unpleasant words with him previous to that year.

Ques. Was there in 1869.

Ans. Nothing; no farther than I was urging the collection of this school money. I had no ill feeling towards him. I could have made

him a good deal of trouble in consequence of his not handing over that school money as he was in duty bound to do. I showed him all the leniency possible.

Ques. When did he give that note of $1,000, signed by Blanchard and Mitchell?

Ans. If I recollect right, it was the 17th of May, 1869.

Ques. When was it due, and to whom payable?

Ans. Due one day from date, and payable to H. B. Stewart. If I had been disposed to trouble him I should not have taken that note you are aware.

Ques. Did you state the fact to any one of his being behind with his school-money?

Ans. We talked the matter over with reference to his liability in the matter.

Ques. Frequently talked it over?

Ans. No; at the time I took the note?

Ques. With whom?

Ans. With him?

Ques. With any one else?

Ans. I can't say definitely. I should presume likely I did.

18 Ques. The point is, did you make a business of telling people, when you met them, about it?

Ans. No, sir.

Ques. Of whom did you first learn of the deficiency of his not having the school money to pay over?

Ans. The first case was from Mr. Thompson, the principal of the school, in December, 1868, I should think; I may be wrong. It might have been in January, 1869. It was about that time. We drew an order for this bill, in Chicago, about the time this money was paid in. I took the order and went to Mr. Lakin with it intending to get the money and express it to Chicago; that was the first time I knew directly of the deficiency; that is the first in which I was personally interested. I went to Mr. Lakin's office and could not get the money, and had to advance it myself. Mr. Lakin had gone to Milwaukee.

Ques. You say that matter was known in Brodhead at that time?

Ans. I should think it was generally known.

Ques. You say it was your idea that he could not continue long in business?

Ans. It was.

Ques. When did you come to that conclusion first?

Ans. I came to that conclusion when I learned that he had taken the district money to pay his individual debt with, and let the district lay out of it; that's when I came to that conclusion; a man must be pretty hard up that will do that.

Ques. Was it that upon which you based your conclusion?

Ans. That was one of several reasons.

Ques. Did you come to that conclusion before you learned of his taking the district money?

Ans. I heard of many debts that he was owing previous to that time, and heard about that time that Nazro was crowding him up pretty sharp, and trying to get what he was owing there.

Ques. Question repeated.

19 Ans. I don't know that I can tell you now just when I came to that conclusion. It *is* passed from my mind.

Ques. Did you mean to state it as it was when you said that you came to the conclusion when you heard that he had used the district money, or isn't that true?

Ans. I had made up my mind at that time, but whether I had reached it before I can't say.

Ques. Did you tell anybody about your conclusion?

Ans. I can't tell you.

Ques. Did any one tell you that they thought he could not continue long in business?

Ans. I can't tell that either. I can't think of any particular person with whom I had spoken in regard to that matter, it is so long since.

Ques. Did any person during the year 1869 tell you that Lakin would fail, or wouldn't continue in business long, or that they thought so? And, if so, state when and where it was, and who made the statement, and what he said.

Ans. I understand by failing, when a man fails to meet his payments, or make some arrangement about them satisfactory; I was told by one of the express agents, but cannot tell you what day. It was about the time this school matter was being arranged that there were papers sent there against Mr. Lakin that he could not collect and had to return. I don't know that I can name any time that any person spoke to me about it. I think that Esquire Mack and I talked over that same matter with reference to it. It is so long since that I cannot state what any one person said. I did not charge my mind, and I should not dare to particularize what any one person said.

Ques. Did any one, during that year, say that he wouldn't be able to continue business, or anything in substance like that?

Ans. As I said before, it is so long ago I cannot answer.

Ques. Did any one, during that year, tell you that they thought he had not property enough to pay his debts; and, if so, who was it, and what did he say?

Ans. He told me, himself, that year, while we were fixing up the school-district matters, or about that time, that he was worth over
20 $20,000 over and above all his debts; but I had not much confidence in the statement. He said that while he was trying to stave me off on the school-money matter—that was about May, 1869. Mr. Mack and I exchanged views, and both thought he did not have property enough to pay his debts.

Ques. Did any one else say that to you besides Mr. Maek?

Ans. I don't recollect. I presume likely there were many others, but I don't recollect who else. Mr. Mack was secretary of the school-board and I was president, and from our relations we naturally talked about it.

Ques. You have stated now all the persons who have made statements in regard to Lakin that you can now remember; if not, state who else, and what they said.

Ans. To undertake to name any other persons now as making statements, I can't do. If it had been a few days ago, I might identify the persons and give the conversations, but it was so long ago I can't remember. I should think likely I also talked with Mr. Mitchell about it.

Ques. You may state all you heard any person say during the year 1869 in regard to Lakin's insolvency, giving the name of the persons, and what they said, besides what you have already stated.

Ans. I don't think I can recollect now any conversations that occurred so long ago. These conclusions that I arrived at were from general reports, and of paper coming for collection and being sent back protested, &c.

Ques. Is there any report or fact which you have not given? If so, state it, and tell us from whom you obtained it, or how you knew it?

Ans. I don't think there is anything more that I need to say that I should be disposed to swear to.

Ques. What is the name of that clerk?

Ans. John Taylor.

Ques. Mr. Mack was a lawyer in Brodhead, was he not?

Ans. He is a gentleman of Brodhead. He is a lawyer.

Re-direct:

Ques. At the time this defalcation occurred what was the num-
21 ber of the board of education in that town?

Ans. Six commissioners and one superintendent.

Ques. Did they all know of the defalcation?

Ans. They did.

Ques. Did his two bondsmen know it?

Ans. They did.

Ques. That was in the last part of December, 1868, or first part of January, 1869?

Ans. Yes.

Ques. Now, then, at that time were you occupying any position that made it necessary to communicate the fact of the defalcation to any parties, and if so, to whom?

Ans. I was acting as president of the board at that time. Perhaps it was my duty to notify the board of it, and I presume I did. I also notified some parties who had orders that the money was paid in and should be ready for them. One person in particular that I remember of was Mr. Thompson, the principal, who had an order of some $300.

Ques. Did you communicate this to any merchant or merchant's agencies?

Ans. I communicated it to a merchant, and I presume I did to others.

Ques. Did you ever communicate the fact to any commercial-agency soon after the fact occurred?

Ans. I should think likely I did.

Ques. Do you recollect distinctly whether you did or not?

Ans. I think I did.

Ques. Whose agency was it?

Ans. R. G. Dunn and Co.

Ques. Now state why you compared notes with Mr. Mack in relation to Lakin's condition at or about the time the defalcation was diseovered.

Ans. Mr. Mack reported to Bradstreet and Son, and at that time I reported for R. G. Dunn & Co., and that is the reason we compared notes.

Re-cross-examination:

Ques. Did you at the time Lakin told you he was worth $20,000
22 over and above his debts suppose that he intended to lie about it?

Ans. I think he did. Any [one] couldn't have been in the circumstances he was without knowing it. He said he did not know why folks were crowding him so when he was worth $20,000 over and above all his debts and liabilities.

H. B. STEWART.

23 *B. R. Clawson.*

B. R. CLAWSON, being first duly sworn for plaintiff, says:

My age is 34 years. I reside at Brodhead, and am a merchant. I

have resided there ten years and upwards. I am acquainted with Leonard Lakin, and have been acquainted with him ever since I have been in Brodhead—10 years. Four years of the time there was only an eight-inch wall between us, he being in one store and I the other.

Ques. Do you know when he went into bankruptcy—when his store was closed?

Ans. I know when they said he went into bankruptcy—when his store was closed.

Ques. About what time was that?

Ans. Seems to me it was about the last of December, 1868, or first of January, 1869.

Ques. Had you been familiar for the year previous with the way and manner in which he conducted his business?

Ans. Somewhat.

Ques. What was the reputation of Mr. Lakin for the year previous among the business community at Brodhead for solvency?

Ans. I thought him not good.

Ques. What was the general opinion in the community generally?

Ans. There seemed to be two classes: One was that he wasn't good, and the other seemed to be doubtful, but not so determined as the other.

Ques. Was his condition the subject of remark in the village of Brodhead during that time?

Ans. Yes, sir.

Ques. Did you ever hear of his being a defaulter to the school fund in that village or community, and if so, when?

Ans. I did. Seems to me it was in the winter. It must have been in the latter part of January, 1869. It was just after Stewart was elected treasurer, which was in the spring of 1869.

Ques. How did he fulfill his pecuniary engagements; promptly or otherwise?

Ans. Previous to this I was collector for the First National
24 Bank of Milwaukee. They forwarded me a note for collection drawn in Albany, N. Y., but I can't say who it was payable to. I called on Mr. Lakin for payment. He said he would pay it in a few days. I let it run till the last day of protest would be out; then I said to him I would have to protest, or else have the money. He paid me part of it, and I loaned him the balance for a few days and forwarded the money. I did a good deal of running, and after that I made my mind up that I did not want any more collections, and so notified the bank.

Ques. Do you know of any paper of his during the year 1869 that was dishonored, or that he failed to meet at maturity?

Ans. I know, or at least I was told so by the express agent, that they had $1,400 for collection, and that he had failed to collect it.

Ques. Did you ever have any consultations with Lakin in regard to his affairs during the year 1869, and six months previous to his failure?

Ans. Yes.

Ques. State what it was.

Ans. One night I was going home late from the store. It must have been 11 o'clock. I heard a voice call to me. I turned around, and Mr. Lakin spoke to me right in the street. He said that his credit was bad, or reported bad, and he was told that I was reporter. I said that I was not. He asked me then what I should do in such a case. I said pay his notes at maturity, and no one could hurt him. I said to him that I didn't care what they reported on me; that they couldn't hurt the credit of a

man as long as he paid his paper, and advised him if he had gone beyond the centre, meaning if he had gone beyond his means, to retract so that he would not be so extended—meaning that when a man has gone beyond his business he should retrench and keep his expenses as low as possible, and in case he was all right he could make a showing to his creditors that would throw the reporter in a lie. I think that was all the conversation at that time that I remember.

Ques. Did Lakin buy goods in Chicago?

25 Ans. I think he did.

Ques. Have you heard anybody, during the year 1869, speak about his condition and his credit? If so, where and by whom?

Ans. It was talked up among business men. I was questioned by Joseph Bostwick in New York; he said Lakin owed him $150.00; by other hardware men in New York and Chicago by letter, and, when I was there, personally.

Ques. Were they questioning his responsibility?

Ans. They seemed to be in doubt. When they questioned in writing I did not answer them; verbally, I did.

Ques. About what time did this occur?

Ans. In New York, in the spring of 1869. I know it was talked up among business men in our town that he was shaky, but to what extent I do not know.

Ques. What effect did the building of that block of buildings have upon Lakin's business condition?

Ans. Bad effect.

Cross-examined:

Ques. What is your branch of business?

Ans. Dry goods—a general stock, except boots and shoes.

Ques. When were these notes at the express office in reference to the time he completed these buildings?

Ans. About the time, I think.

Ques. Was this talk with you that night before or after he completed the building?

Ans. After, I think. It must have been in August or September. I know we were getting in stock, and that's the reason we were up.

B. R. CLAWSON.

26

27 *C. W. Mitchell.*

CHARLES W. MITCHELL, being first duly sworn for plaintiff, says:

My age is 28 years. I reside in Brodhead; have resided there 13 years next spring. I have known Leonard Lakin 10 or 11 years. I am a merchant. It is 8 years next spring since I commenced for myself.

Ques. Are you familiar with the way and manner in which Mr. Lakin conducted his business for the year next preceding his failure?

Ans. To some extent.

Ques. What was the reputation of Mr. Lakin for solvency among the business men of Brodhead during the six months next preceding his failure?

Ans. Not very good.

Ques. How was it during the year next preceding his failure?

Ans. Not much better.

Ques. Was his condition much talked of in Brodhead during that time among business men?

Ans. It was.

Ques. Did you ever hear of his defalcation to the school fund? If so, about when?

Ans. I did. About the first of January, 1869, was the first.

Ques. Was that defalcation talked of much in Brodhead?

Ans. Considerably.

Ques. Was it generally known in that community among business men?

Ans. I think it was.

Ques. What was Lakin's credit in Brodhead during the year preceding his failure—good or bad?

Ans. I don't really know. It would have been bad with me, and I know others with whom it would have been bad. It might have been good with some others who were not posted.

Ques. Did he meet his paper and other obligations promptly at maturity?

Ans. I know a note that Kirkpatrick held against him that was not paid at maturity, and is not paid yet. That's the only one I remember now that I know about.

Ques. How did the building of that block of buildings affect the credit of Mr. Lakin?

28 Ans. I think it was damaging to his credit.

Cross-examined:

Ques. Did you have any claims against him?

Ans. No, sir, only as I was bondsman for him, and signed a note with him to Mr. Stewart.

Ques. When did you sign his bond?

Ans. I think I was on his bond from the spring of 1868 to the spring of 1869.

Ques. Did you ever have any other deal with him than that?

Ans. Nothing particular.

Ques. Did you have any knowledge of his condition except what people told you on the street?

Ans. Nothing till about the first of January, 1869, at the time he drew the money from the town treasurer, and went to Milwaukie with it.

Ques. What did you know then?

Ans. I knew he took the money when there were orders waiting to be paid. I don't know what he did with the money. I know when the orders were presented they were not paid.

Ques. Anything else?

Ans. That's about the first that I knew. Then, at the time Mr. Stewart was elected treasurer, he was behind some $1,100.00 to the district and could not pay it. He agreed at the time that he would pay the $100.00, or a little over, if Mr. Stewart would take his note for $1,000. Mr. Blanchard and I signed the note. We thought it would not make our condition any worse than it was then.

Ques. Did you know any more about his affairs than what you have stated?

Ans. Nothing that I remember, only from hearsay.

Re-direct:

Ques. You and Mr. Blanchard were the bondsmen of Lakin, were you?

Ans. Yes, sir.

29 Ques. How came you to endorse his note when you had a knowledge of his condition?

Ans. As Mr. Blanchard and I were already responsible for it, we thought it would be better to sign a note with him and have it paid along than to have collection enforced at once, for we knew if collection was enforced we would have to pay it.

Ques. You were really, then, influenced to endorse the note because you were responsible on the bond?

Ans. That was the reason.

Ques. Under the circumstances would you have endorsed the note, you and Mr. Blanchard, if you had not been on the bond?

Ans. No, sir. Mr. Blanchard and I went to him to get released from the bond some time before that, and he told us he was never so well able to pay every dollar that he owed as he was then, and that this talk about his failing was all persecution.

Re-cross.

Ques. How long was that prior to giving this note?

Ans. That was along in the winter prior to his going to Milwaukee and using this money, and he repeated about the same to us when we signed the note with him.

Ques. You never paid anything on the bond or note did you?

Ans. I did not. I managed, after he went to Milwaukee and used this money, not to let any more of the school district money, or but very little of it, get into his hands.

(Counsel for defendant objects to all of last answer after the words "I did not" as not responsive, and voluntary on the part of the witness.)

Re-direct.

Ques. You said something about managing after he went to Milwaukee and used the school district money not to have any more money get into his hands. Explain what you mean by that?

Ans. The town treasurer collected taxes in our store, and I
30 arranged with him to pay the school district orders and the bonds which the district had issued also for the building of the schoolhouse. Then I made it my business to look up those holding these claims against the district, and the town treasuror paid them and handed them over to Lakin in place of the money.

Ques. You adopted that, then, as a prudential measure to prevent money going into Lakin's hands, and thereby preventing your liability on the bond?

Ans. I did.

Ques. Did you do that with the concurrence of your co-surety, Mr. Blanchard, and the officers of the board?

Ans. I did.

(Counsel for defendants objects to last question as hearsay, in addition to the reasons in the stipulation.)

C. W. MITCHELL.

31 *M. M. McNair.*

M. M. McNAIR, being first duly sworn, on oath deposes and says:

My age is 47 years. I reside at Brodhead. I have resided in the town of Decatur since 1852 except two or three years that I resided here in Janesville. Brodhead is in the town of Decatur. I haven't any particular business. I have worked at a good many different kinds of business. I know Leonard Lakin. I have been acquainted with him ever since he came to Brodhead.

Ques. What has been always, up to the time of Lakin's failure, your social relations with him?

Ans. The very best.

Ques. Have you been on intimate terms with him?

Ans. Yes.

Ques. For the six months next preceding Mr. Lakin's failure, what was his reputation in Brodhead among business men for solvency?

Ans. For the six months immediately preceding his failure I was mostly engaged in building and working very hard, and was not in the street much to learn anything about his circumstances with the exception of what Mr. Lakin and his clerk, Mr. Taylor, told me at the time when they came to get me to endorse and to get money of me. I suppose that men said but little to me about him from the fact that I was building right side of him, and was intimate with him, and they thought what was said to me might go back to him.

Ques. Please state what his general reputation for solvency was, for six months previous to the failure, among the business men of Brodhead.

Ans. As I said before, I didn't hear much about him. Occasionally there were hints thrown out that he could not go through with all his undertakings, but there was very little said to me.

Ques. What was the character of the hints thrown out?

Ans. That he was going too fast; that is, that he was building there. I was not there during the whole time he was building
32 there. I resided here in Janesville. I think he was building when I went back.

Ques. What was the character of the hints thrown out about him for the six months next preceding his failure?

Ans. That he could not stand up under the load he was taking. But there was very little said to me; if there had been I should probably not have done what I did do.

Cross-examination:

Ques. What did you do that you would not have done if there had been anything said to you?

Ans. I shouldn't have taken out $300 at a time from my pocket and handed it to him without any witness to it or note or anything.

Ques. When did you first do that?

Ans. In the spring of 1869.

Ques. About what time?

Ans. I should judge it was in the month of May.

Ques. Did you do that more than once?

Ans. Yes.

Ques. When did you first let him have money after you went back to Brodhead?

Ans. I am not positive whether I let him have any before I let him have this $300 or not.

Ques. Did you take any note for the $300.

Ans. No, sir. He said he was short of money, and I took out the money and let him have it just as he was getting on the cars to come to Janesville.

Ques. Did you ever take a note of him?

Ans. I don't think I ever did except for some I let him have before I came to Janesville to live.

Ques. Did you let him have any after May, 1869?

Ans. I did.

Ques. When and how much after May, 1869?

Ans. I think Mr. Taylor, his clerk, came to me for some money during the summer of 1860, and I let him have it.

Ques. How much?

33 Ans. About $150—his books will show.

Ques. What month?

Ans. I don't know; it was some time in the summer. I don't know that his books will show either. They didn't always show things just as they were.

Ques. Did you let him have money more than once in 1869?

Ans. Yes; I think I did.

Ques. About when?

Ans. In December, 1869, I think. I think it was about the last money that he wrung out of anybody that I know anything about.

Ques. About what time in December, 1869, was that?

Ans. I think about the first. I remember that pretty distinctly, because I borrowed it to pay taxes with, and didn't want to use it just then, and let him have it, and I had to pay it a short time ago with 10 per cent. interest. He said he would pay it if he was on earth.

Ques. How much was that?

Ans. It was $100.

Ques. Did you take any security for any of these amounts?

Ans. I did not. I don't know whether I took a note for the money Taylor got or not, but for the rest I took no note or security of any kind.

Ques. Had you any doubt at the several times you let him have this money that he had property sufficient to pay his debts, and that he would pay you as he promised to?

Ans. I had not.

Ques. Did you live in the village of Brodhead?

Ans. Yes.

Ques. Through all the year 1869?

Ans. Yes.

Ques. Were you acquainted with business men there?

Ans. Yes, sir; but I was not with business men much, but hard at work on my building.

Ques. Who threw out hints that Mr. Lakin could not go through with all his undertakings?

Ans. In the spring of 1869 there was a very active canvass over

34 officers of the school board, and I took a very active part in electing him a member. I pitched in in the morning and worked for him as hard as I could. Some men saw me working hard for him, and they threw out hints about his responsibility.

Ques. You have a claim against his estate?

Ans. Yes, sir.

Ques. What does it amount to?

Ans. Over $50.00, about $60.00 or $65.00, I should think.

Ques. You say that had you known his condition you would not have let him have the money that you did?

Ans. No, sir. Nor would I have laid out $5,000.00 or $6,000.00 in building a store right side of him. I think it has been 2,000.00 damage to me—his failing.

Ques. Did you, while building your store during the summer of 1869, have any doubt that Mr. Lakin would continue to do a large and successful business there in Brodhead?

Ans. I did not. I should have doubted it if I had not been misled by him and his clerk.

Re-direct:

Ques. What do you mean by Lakin's books not always showing as they ought to?

Ans. I mean that he had charged to me that I didn't sometimes have; that is, some small minor things, and I do not know that it was intentional. His books seemed to be all "muxed" up. He had girls there keeping the books, and there did not seem to be any system or order to them.

Ques. You mean, then, that he had incompetent book-keepers?

Ans. I did not think they were competent. He would neglect to charge things for several days, and his books did not seem to show anything about his business.

Ques. Did you get the $300.00 you loaned to him?

Ans. I did.

Ques. How long did you loan it to him for?

Ans. I can't state whether it was for a month or only for a few days.

Ques. Did he pay it promptly?

35 Ans. He did not.

Ques. How many times did you have to ask him for it before you got it?

Ans. I probably asked him and Mr. Taylor, his clerk, 3 or 4 times for it.

Ques. Was he hard up, as the saying is, when he got it?

Ans. He said he wanted the money, and I supposed him good for it. I don't know how hard up he was.

Ques. Did he pay the $150.00 promptly as he agreed to?

Ans. I rather think he did not. I know he did not. I did not press the matter at all, for I did not need the money.

Ques. Did Lakin or his clerk solicit you to endorse for him during the summer of 1869?

Ans. They did in the spring and summer of 1869.

Ques. Did you refuse to endorse for him?

Ans. I did, sir, totally.

Ques. Would you have lent the several sums of money to Lakin had you believed at the time the hints and reports you have testified about?

Ans. I should not, sir.

Ques. Have you not said to several that if you had believed the reports at the time you never would have loaned the money to Mr. Lakin?

Ans. I have.

Re-cross-examination:

Ques. Have you not during the last six years been in the habit occasionally of loaning money, shaving paper, buying and selling property, or the like?

Ans. Have been in the habit of loaning money and buying and selling property; don't know of having bought paper very often at a discount. The reason I would not endorse his paper was because I would not endorse for any one. He stated at the time that he had big collaterals to back it up.

M. M. McNAIR.

36

37 *J. F. Mack, s'r.*

J. F. MACK, being first duly sworn, on oath says:

My age is 63 years. I reside at Brodhead. I have resided in Brodhead and its immediate vicinity 22 years. I am a lawyer and farmer. I know Leonard Lakin, and have known him 10 years or more.

Ques. Were you familiar with the manner in which Mr. Lakin conducted his business for a year prior to his failure?

Ans. To some extent.

Ques. What was his condition financially during that year?

Ans. Not good.

Ques. What was his general reputation for solvency among business men during that year?

Ans. Generally bad.

Ques. Did he meet his paper and obligations promptly or at maturity?

Ans. Not generally.

Ques. Did you know of any of his paper that was dishonored, or that he failed to pay at maturity? If so, state the amount and the different instances.

Ans. I did know of some—not much. One to the Grand DeTour Plow Company for several hundred dollars, the exact amount I cannot state, I think about $600. One to the agent of McCormick & Bro., for collections he had made for McCormick for several hundred dollars. Two in Chicago. One to J. Willard Fox, for glass, of some $200 or $300. One to a willow-ware house in Chicago, the name I disremember, for somesomething over $100. Several that were shown to me by the express agent during that year which were returned unpaid. A note to Mr. Kirkpatrick, of Rock County, for lent money, $150.00. I think one to a widow lady, whose name I disremember, for $100. Others of which I heard. The school fund for the amount of some $1,100 and odd *dollars* in the spring of 1869. Those I recall, but I know there are others which I don't now recall. There was one to my son of $300 or $400 lent money, and a debt due to Nazro of some $2,300 or $2,400.

Ques. Were all these demands dishonored?

38 Ans. The most of it was long past due. The Grand DeTour was over two years. McCormick's had been running a good while. The school moneys had been due from the 28th of the last December.

Ques. Do you know of any cases where Lakin was acting in a fiduciary capacity and failed to meet his obligations; if so, what?

Ans. I do. In the case of McCormick, he collected for them and did not pay over. I think it was some $400 or $500. Also as treasurer of the school district. Also as treasurer for one of the churches; he was found on settlement to be behind some $400 or $500 to the church. When called upon to pay, to meet paper due from the church or the trustees, he paid a little, paid a part and couldn't pay the balance. Whether it is all paid up since I am not advised. In the fall of 1868 he received deposits from produce dealers, and especially from W. H. Strawser. In the autumn of 1868 he neglected or refused to pay checks drawn on him for it from Strawser, while in his hands, deposited with him by Strawser, he said some $2,000 or over as appeared on settlement. That was subsequently paid, or a portion of it, by his taking up Strawser's checks that he had refused to pay held by farmers and giving his due bills.

Ques. Was Lakin's defalcation to the school fund generally known in Brodhead in May and June, 1869?

Ans. It was.

Ques. Did you and Mr. Stewart ever compare notes as to the financial condition of Lakin during the fall of 1868 or winter of 1869? If so, state what your conference was about.

Ans. We did in the fall of 1868. Lakin's rumored deficiency or defalcation with Strawser was the first subject of comment both in the community and with us. On the 28th day of December, I think it was the day he used the school fund, we had another interview, and exchanged views and decided what course had better be taken with the balance
39 of the school money to save the bondsmen. We decided to apply to the town treasurer to cash outstanding orders on the school treasury, instead of having the money paid in to Lakin. This was in accordance also with the expressed wish of the bondsmen. Either at that time or soon after Mr. Stewart and myself compared views in regard to our duty as employees of the agencies, in reference to Mr. Lakin's standing. Believing then, as we both did, that he was insolvent, we decided to give the agencies a gentle caution, and we did.

Cross-examined:

Ques. Were you attorney or agent for any of the claims you have named in 1868 or 1869; and if so, which?

Ans. I was inquired of by parties that I have referred to in regard to their claims, and was employed as attorney by J. Willard Fox and by the willow-ware house to collect claims.

Ques. Did you ever talk to Lakin about any of these claims except the two you held as attorney?

Ques. Did you know anything about them except what you learned by hearsay?

Ans. I saw several of the claims in the hands of the express agent—the *agent* I got upon information without seeing them, except the church matter and school matter. I was clerk of the church and investigated the claim, and clerk of the district and investigated the claim.

Ques. When did you receive the Fox claim as attorney?

Ans. I think in the fall of 1868.

Ques. When the willow-ware claim?

Ans. In the summer or fall of 1869, I think—don't remember the date.

Ques. Have you got either of them now?

Ans. No; the Fox claim is settled, and the other proved as a claim in bankruptcy.

Ques. How many claims have you proven up.

Ans. One to the willow-ware man of between $100 & $200;
40 one of Mrs. Vanderbilt of $100, and one belonging to a Mrs. Moore, of $150, and one to Mr. Cole of some $300 or $400. I think there *is* one or two more. There is one to William Cortelyou of $200 or $300. These are claims for lent money.

Ques. All except the willow-ware came into your hands since the bankruptcy?

Ans. I knew of them before, but they came into my hands since the bankruptcy.

Ques. Are you one of the attorneys for the assignee in this matter?

Ans. I have been employed by the assignee to assist him in the matter outside of court. I have nothing to do in court.

Ques. Assist him in what?

Ans. In posting him in regard to the standing of Mr. Lakin in our town during that time, and give him such information as he might need.

I will state that he first employed me to assist *me* in getting the claim of Nazro insured. This was before the bankruptcy. It was in the fall of 1869, in November or early in December, 1869. I at once informed him that, in my opinion, it was a hopless case. I had a list of claims against Lakin at that time in my safe amounting to over $16,000.00. I showed them to him with the express understanding that it was confidential and should not be exposed. Mr. Hall took the list; I gave it to him with the understanding that he should not exhibit it to anybody. He asked me what he should do; I advised him to go to Mr. Lakin and demand an exhibit of his affairs. He asked me if he could compel him to make an exhibit. I told him he could or drive him into bankruptcy. He left me saying he would go and see him. In a short time he returned and stated to me that I was not more than half right in the exhibit, and remarked that instead of its being $16,000.00 and odd, as I had given him, that Lakin had given him a list of over $24,000.00. I asked him if he had furnished it from his books. He replied no, that he had taken it from Lakin's mouth without referring to his books. I then asked him if the list I had furnished him was not correct as far as it went.

41 He replied that it was, with one exception, that of Mr. Barrows having been paid, or nearly so. Nothing more passed, only that Mr. Hall said he would go back and decide what to do.

Ques. Did Mr. Hall tell you the indebtedness was $24,000 the same day he first spoke to you about Nazro's claim?

Ans. I think he did.

Ques. What did you say he first wanted of you that day?

Ans. He first wanted to know what Lakin's standing was, and what he could do to get his claim secured or paid.

Ques. When did you next see Hall?

Ans. I can't name the date he next came out.

Ques. What grain-dealers or produce-dealers deposited with Lakin during the year 1868?

Ans. Mr. Strawser, and, I think, Cole & Blanchard deposited with him that year until they had some trouble to get their funds out.

Ques. Did you have anything to do with it personally?

Ans. I did as an adviser or counsellor for Strawser.

Ques. Did you talk with Lakin about it?

Ans. I did not.

Ques. Did you know anything about it, except what you learned of Mr. Strawser or somebody else?

Ans. I did not, except what I heard from Mr. Strawser and from Mr. Seeber, who was employed, at my request, to settle the account for Strawser, myself being compelled to leave town.

Ques. Did you have anything personally to do with this McCormick matter?

Ans. Nothing personally, except to converse with Mr. Smith, the agent, about it, or rather he with me.

Ques. Have you any knowledge of the matter, except what you got from Smith?

Ans. I have not.

Ques. How early in 1868 did you and Stewart compare notes about Lakin's condition?

Ans. I think, in October. I am not sure, but it was in October, I think.

Ques. Had either of you any claims against him then?

42 Ans. I do not remember whether I had, but I had a large list of his debts then.

Ques. For collection?

Ans. No, sir; unless it was a claim from Chicago.

Ques. From whom did you get this list that you had then?

Ans. From no person, except as I got it from individual claims that I heard of, or was enquired of about.

Ques. Was the same true of the list you showed to Hall?

Ans. Partly, except, perhaps, a portion that I had for collection.

Ques. Did you show this list of $16,000 indebtedness to Hall before or after the time Lakin had been to Woodstock?

Ans. I cannot tell. I don't know when he went to Woodstock.

Ques. When did you first report or caution the agencies in regard to Lakin, gently?

Ans. In December, 1868, or January, 1869. I had always reported him good before that. I then reported him very doubtful, and gave the opinion of the commercial men of the place.

Ques. Did the reports grow better or worse after that?

Ans. I cannot state when my last report to the agency was made. Some time in 1869; I think the fore part of the year.

J. F. MACK.

At 6 p. m. adjourned till 9 a. m., Wednesday, March 1, 1871.

43 *C. Seeber.*

District court of the United States in and for the eastern district of Wisconsin.

IN THE MATTER OF LEONARD LAKIN, BANKRUPT, on the petition of Augustus O. Hall, assignee,
vs.
WAGER AND FALES. } In bankruptcy.

IN THE MATTER OF LEONARD LAKIN, BANKRUPT, on the petition of Augustus O. Hall, assignee,
vs.
ANDREW P. HAYNOR. } Same court.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, United States commissioner in and for said district, at the commissioner's office, Milwaukee, October 29, 1870. Present, A. Finch, esq., of counsel for the assignee; J. B. Cassoday, esq., of counsel for the defendants in each of the above-entitled matters.

CHRISTOPHER SEEBER, being duly sworn in each of the above-entitled matters, deposes and says as follows, to wit:

My name is Christopher Seeber. I am about 59 years old. I live in Brodhead, Wisconsin. I am at present in the insurance-business; a general collector.

Q. Did you, on or about the 27th of August, 1869, draw a mortgage from Leonard Lakin and Orlina A. Lakin, his wife, to Andrew P. Haynor?

A. I did.

44 Q. Will you now look at the paper now shown you, marked "Exhibit A," and state whether that is a copy of the mortgage which you drew?

(NOTE. Counsel hands witness a paper.)

A. I think that that is a copy of the mortgage which I drew, and to which I took the acknowledgment.

(NOTE. Said paper is hereto attached, and marked "Exhibit A.")

Q. At whose request did you draw the mortgage?

A. At the request of Leonard Lakin.

Q. What was the mortgage given to secure?

A. I cannot answer that beyond what the mortgage itself states. I know nothing beyond what the mortgage states, except what Mr. Lakin may have stated to me at the time.

Q. Who was present when the mortgage was executed?

A. Leonard Lakin signed that mortgage in my office, and no one was present but he and myself when he signed it. When his wife signed it I cannot say who was present, but John Taylor must have been present. I judge of that from seeing his signature there as a witness. Some of the family may have been present, but I have no recollection. Mrs. Lakin signed it at the house of Mr. Lakin, and both Mr. Lakin and his wife acknowledged it there.

Q. To whom did you deliver the mortgage after it was executed and acknowledged?

A. My impression is that I delivered it to Mr. Lakin immediately.

Q. Do you know Mr. Hayner; and if so, how long have you known him?

A. Yes. I can't say positively, but, I think, about two years. I had seen him some 8 or 10 years, but I had no acquaintance with him until he moved to Brodhead, which must have been about two years last spring.

Q. Had you been doing business for him at any time during the year previous to the date of the mortgage; and if so, what kind of business?

A. No, sir.

Q. Had you seen him at Brodhead during the year previous to the execution of the mortgage?

A. Yes; that was the year the store was built.

45 Q. How often or how many times had you seen him at Brodhead during the year next preceding the execution of the mortgage?

A. I saw him daily during perhaps 2 or 3 months while the store was being erected.

Q. Was he present at the time of the execution of the mortgage, and was he at Broadhead at that time?

A. He was not present at the time of the execution of the mortgage, and was not at Broadhead at that time, to my knowledge. I had not seen him since the 1st of June previous, and I don't know as I ever have seen him since.

Q. Where did he reside at the date of the mortgage and before?

A. At the date of the mortgage he resided at Woodstock, Illinois, and had been there, I should judge, over 6 months. The year previous to that time he resided in Broadhead, Wisconsin,

Q. Was he related to Lakin; and if so, how?

A. I presume that Mr. Lakin married Mr. Hayner's daughter. Mr. Hayner was father-in-law of Mr. Lakin.

Q. Who was the book-keeper of Lakin at the time of the execution of that mortgage?

A. Louisa Hayner, I think—Mrs. Lakin's sister, and daughter of A. P. Hayner.

Q. If you can, state the length of time the three notes secured by the mortgage had to run, by their terms.

A. Of my own knowledge, I do not know, for I never saw the notes.

Q. Do you know whether, at the time of the execution of the mortgage, Mr. Lakin was indebted to Mr. Hayner?

A. Of my own knowledge, I do not.

Q. Do you, from any other source of knowledge?

(Objected to.)

A. Mr. Lakin, at the time of the execution of that mortgage, admitted that he owed him $3,276.87, as he stated to me "that is the amount I owe father."

Q. Did you ever have any conversation with Mr. Hayner about this mortgage?

A. No; I don't think I ever *see* him after that mortgage was dated.

Q. Did you have any conversation with him in reference to
46 the affairs of Lakin prior to the execution of the mortgage?

A. I do not think I ever had any conversation with him about their affairs. I have no recollection of it.

Q. Did Mr. Hayner, prior to the execution of the mortgage, make any request of you to look after the condition of Lakin?

A. No, sir.

Q. Did he ever ask you, in reference to Lakin, to watch his matters?

A. No.

Q. Did he ever ask you to watch events, alluding to Lakin's affairs?

A. No, sir. The last time I saw Hayner, the June previous to the date of the mortgage, as he was leaving Brodhead, he asked me to look after some things, or his things, and I can't tell which. The circumstances were these: Mr. Hayner had left with me certain collections, and in the course of that conversation this expression was used: "Now, squire, I want you to look after these things," or "my things," I can't tell which. Now, you have the language used; I can't tell whether he referred to the collections or not. Now, in thinking this whole matter over, I have come to the conclusion that, in asking me to "look after these things," or, "my things," he couldn't have meant Lakin's matters, of which I knew nothing about.

Q. What did you suppose he meant at the time?

A. I don't know as I had any impression at all.

Q. What matters did you have of Mr. Hayner's in your hands?

A. They were some collections that had been given him by some parties living about Milton Junction. I think I can recollect one distinctly, and that was in favor of Doctor Copely. These had been left with him for collection, and he passed them over to me when he left.

Q. Did you ever receive any letters from Hayner after he left Brodhead, and after or before the mortgage was executed?

A. I never received but one letter from him.

Q. When was that?

47 A. After last December. I could not tell the date; think during the winter, but nothing that related to this.

Q. Did you ever write him a letter; if so, when?

A. I think I did, last winter.

Q. Was it in reference to this matter?

A. No.

Q. Was that the only letter you ever wrote to him?

A. I do not recollect of having written but only that one letter.

Q. Have you ever stated to any one that you knew some things about this matter which you would not tell or disclose to any one?

A. About the matter betwixt Hayner and Lakin?

Q. Yes.

A. I don't think I ever did.

Q. Have you ever made such a statement about any other matter?

A. I may have made such a statement about a settlement I made between W. H. Strawser and Mr. Lakin.

Q. Did that relate to Mr. Lakin's affairs at the time or before the execution of the mortgage?

A. This settlement that I brought about between Strawser and Lakin was in the fall or winter of 1868.

Q. How many months was that prior to the date of the mortgage?

A. The fall or winter previous.

Q. Well, what was that that you ascertained then that you said you wouldn't tell?

A. In the course of settling up that affair of between 28,000 and 30,000 dollars, checks drawn in April and the fore part of the winter, I discovered that Mr. Lakin's books were not correctly kept, and that he was about "gone up."

Q. Did you make a thorough examination of Lakin's affairs at that time?

A. No; only so far as related to that matter—the settlement between those two parties.

Q. What was the reputation of Mr. Lakin for solvency, at Brodhead, for the 6 months next preceding the execution of the mortgage?

A. Common reports *reports* said that he was insolvent.

48 Q. Do you know anything about his being embarrassed and failing to meet his obligations of trust or otherwise?

A. Yes, sir; at the time I made this settlement with Strawser he was unable to meet $2,400, money due on deposit in cash, though I got it out of him afterwards. This money had been deposited with him to buy stock. Common report said that he was unable to meet a deposit made with him by our school district. I may have stated that Strawser matter too strong when I said that he was unable to meet it. He had not got it when I demanded the money.

Q. How long after you demanded the money from Strawser before you got it?

A. I got part of it right along, by checking on him, he accepting the checks and giving his due-bills, and the balance in about 4 months.

Q. Do you know of any other failures to meet his obligations except as by common report?

A. No, I do not.

Q. Did Hayner know anything about Lakin's failure to meet his obligation to Strawser?

A. I do not know whether he did or not; don't know whether he was there at that time or not.

Q. What reason did Lakin give to you for the execution of this mortgage?

A. He made the statement to me that freights were low on the railroad; that the price of lumber had fallen off somewhat; that Mr. Hayner wanted some money to stock up his yard with lumber; that he wanted to use some money for that purpose, and on collaterals of that

kind he thought he could raise 1,800 or 2,000 dollars—borrow it. I told Mr. Lakin the security was good if it was backed up by a policy of insurance. I then issued a policy of 3,000 dollars on the buildings, payable to A. P. Hayner or the assured, as interest might appear.

Q. At the time that Hayner left matters in your hands for collection did he say anything to you about his having any claim against Lakin?

A. No; and he left no such claim in my hands.

CHRISTOPHER SEEBER.

49 Read over to the witness and subscribed by him before me this 29th October, 1870.

FR. BLOODGOOD,
U. S. Com's'n'r.

NOTE.—The counsel for the defendants in each of the matters above entitled reserve the right to object, in each matter at the hearing, to this deposition, or to any part thereof, as irrelevant, incompetent, or immaterial.

FR. BLOODGOOD,
U. S. Comm's'n'r.

"EXHIBIT A."

This indenture, made this 27th day of August, in the year of our Lord one thousand eight hundred and sixty-nine, between Leonard Lakin and Orlina A. Lakin, his wife, of Brodhead, Green County, State of Wisconsin, of the first part, and Andrew P. Hayner, of Woodstock, McHenry County, and State of Illinois, of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of three thousand two hundred and seventy-six $\frac{87}{100}$ dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said party of the second part, and to his heirs and assigns forever, all that certain piece, parcel, or tract of land situate, lying, and being in the town of Brodhead, county of Green, and State of Wisconsin, and known and distinguished as the north one-third ($\frac{1}{3}$) of lot number one (1,) in block one hundred and one (101,) according to the plat of said town of Brodhead, as recorded in the office of the register of deeds of Green County:

To have and to hold the above-bargained premises to the said party of the second part, his heirs and assigns forever: Provided always, that these presents are upon this express condition, that if the

50 said Leonard Lakin, his heirs, executors, administrators, or assigns, shall well and truly pay or cause to be paid to the said party of the second part, his heirs, executors, or assigns, the sum of three thousand two hundred and seventy-six dollars and eighty-seven cents, with interest thereon annually at the rate of ten per cent. per annum, according to the tenor of three certain notes bearing even date herewith, executed by the said Leonard Lakin, party of the first part, to the said party of the second part, as collateral security, and shall pay all costs and expenses which the said party of the second part, his heirs, executors, administrators, or assigns may be put to, incur, or sustain over and above the costs and fees which now are or may hereafter be allowed by law in collecting said notes or foreclosing this mortgage, and any costs or expenses which the said party of the second part, his heirs

or assigns, shall necessarily pay, be put to, or sustain in any suit commenced upon said notes or said notes and mortgage, though the sum of money then due and secured thereby, (and to collect which said suit shall be brought,) shall be paid before judgment or decree obtained in any such suit; and the sum of twenty-five dollars as attorney or solicitor's fees, in addition to the fees taxable by law; then these presents and the said notes shall cease and will be null and void.

And the said Leonard Lakin does further covenant and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, to pay or cause to be paid said sum of money above specified at the time and in the manner above mentioned, together with all such costs, expenses, and attorney or solicitor's fees, if any there shall be, and that he will pay taxes and assessments of every nature that may be assessed on said premises previous to the day appointed in pursuance of any law of the State for sale of lands for taxes.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

LEONARD LAKIN. [SEAL.]
ORLINA A. LAKIN. [SEAL.]

Sealed and delivered in presence of—
CHRISTOPHER SEEBER.
JOHN TAYLOR.

[U. S. rev., $3.50.]

Exhibit "A". Fr. Bloodgood, U. S. commissioner.

51 STATE OF WISCONSIN,
County of Green, ss:

Be it remembered that, on the 27th day of August, A. D. 1869, personally came before me the above-named Leonard Lakin and Orlina A. Lakin, his wife, to me known to be the persons who executed the foregoing mortgage, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

CHRISTOPHER SEEBER,
Justice of the Peace.

Received for record at 7 o'clock a. m., August 28, 1869.
SAM. LEWIS, *Register.*

REGISTER'S OFFICE, *Green Co., Wis., ss:*

I, Sam. Lewis, register of deeds in and for said county, do hereby certify that the foregoing is a true copy of a mortgage purporting to have been made by Leonard Lakin and wife to Andrew P. Hayner, August 27th, A. D. 1869, and recorded in volume 2 of mortgages, on page 474, at 7 o'clock a. m., August 28th, A. D. 1869; that I have carefully compared the same with the original record remaining in this office, and find it to be a correct transcript therefrom and of the whole of said original.

In witness whereof I have hereunto set my hand and affixed the seal of my office, at Monroe, Wisconsin, this 17th day of March, A. D. 1870.

[L. S.]
SAM. LEWIS,
Register of Deeds.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss :

I, Francis Bloodgood, a commissioner duly appointed by the circuit court of the United States for the eastern district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the
52 more convenient taking of affidavits and bail in civil cases depending in the courts of the United States," passed February 20, 1812, and the act of Congress entitled "An act in addition to an act entitled "An act for the more convenient taking of affidavits and bail in civil cases depending in the conrts of the United States," passed March 1, 1871, and the act entitled "An act to establish the judicial courts of the United States," passed September 24, 1789, do hereby certify that the reason for taking the foregoing deposition is, and the fact is, that the witness above named is material and necessary in each of the causes in the caption of said deposition named, and that he lives at Brodhead, Wis., about 100 miles from Milwaukee, Wisconsin, the place where by law the court at which these causes will be tried is appointed to be held, and that he is about to go out of said district to a greater distance from the place of said trial than 100 miles and not to return in time for said trial, as appears from the affidavit of Asahel Finch hereto annexed, and upon which the witness was required to attend. I further certify that four days' notice to Cassody, Merrill, and Dixon, respondent's attorneys, of the time and place of taking said deposition and notifying them to be present at the taking of the same and to put interrogatories, if they might think fit, signed by me, was made out and served on said respondents' attorneys, as appears from the notices, with proof of service thereof endorsed thereon, annexed hereto. And I further certify that I was attended by the parties, or their counsel, at the time and place as stated in the caption of said deposition and by the said witness; and that the said witness, being of sound mind and lawful age, was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify to the truth, the whole truth, and nothing but the truth, in each of the causes aforesaid, and that the deposition as given was reduced to writing, by consent of counsel, by Joseph Colt, my clerk, a disinterested person, in my presence and under my direction, in presence of said witness, and from his statements; and that the said deposition when completed was carefully read over to said witness and
53 subscribed by him, in my presence and in the presence of such of the parties and counsel in the said cause as were in attendance.

And I further certify that in the caption and body of the said deposition is contained a complete record of all the proceedings before me at the time of the taking of the same, and that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand into the district court of the United States for the eastern district of Wisconsin, the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for either of the parties in the caption of said deposition named, nor in anywise interested in the event of said cause.

In testimony whereof I have hereunto set my hand this 29th day of October, A. D. 1870, and of the independence of America the ninety-fifth.

FR. BLOODGOOD,
U. S. Commissioner, Eastern District of Wisconsin.

District court of the United States for the eastern district of Wisconsin.

IN THE MATTER OF LEONARD LAKIN, BANKRUPT, on the petition of Augustus O. Hall, assignee,
vs.
WAGER AND FALES. } In bankruptcy.

EASTERN DISTRICT OF WISCONSIN, *ss:*

Asahel Finch, of Milwaukee, in said district, being sworn, says: That he is one of the attorneys for the assignee in the above-entitled
54 case, and of counsel for him; that he verily believes that the testimony of Christopher Seeber is material and necessary for the said assignee in the trial of the above matter; that the said Christopher Seeber lives at Brodhead, Wis., about 100 miles from Milwaukee, Wisconsin, where the court at which this deponent expects the said cause will be tried is appointed by law to be held; that said Christopher Seeber is about to go out of said district to a greater distance from the place of said trial than 100 miles, and not to return in time for said trial.

And this deponent further says, that, as he is informed and believes, Wager and Fales, the above-named respondents, reside at Troy, N. Y., more than one hundred miles distant from Milwaukee, Wisconsin, the place where the examination of the said witness is expected to be taken; and that, as he is also informed and believes, Cassoday, Merrill, and Dixon, the attorneys of the said respondents, reside at Janesville, Wis., 70 miles from Milwaukee, as aforesaid.

A. FINCH.

Subscribed & sworn to this 24th day of October, A. D. 1870, before me.

FR. BLOODGOOD,
U. S. Commissioner, Eastern District of Wisconsin.

Notice.

District court of the United States for the eastern district of Wisconsin.

IN THE MATTER OF LEONARD LAKIN, BANKRUPT, on the petition of Augustus O. Hall, assignee,
vs.
WAGER & FALES. } In bankruptcy.

Please to take notice that Christopher Seeber, a witness whose testimony is necessary in this case, and who is about to go out of said district to a greater distance from the place of trial of said cause
55 than 100 miles, and not to return in time for said trial, will be examined de bene esse on the part of the said assignee in this cause, before me, a commissioner duly appointed by the circuit court of the United States for the eastern district of Wisconsin, at my office, No. 8 Excelsior block, southeast corner of East Water and Wisconsin streets, in the city of Milwaukee, eastern district of Wisconsin, on the 29th day of October, A. D. 1870, at 2½ o'clock in the afternoon, at which time

and place you are hereby notified to be present and put interrogatories if you shall think fit.

Dated Milwaukee, the 24th day of October, A. D. 1870.

Yours, &c.,

FR. BLOODGOOD,

U. S. Commissioner Eastern District of Wisconsin.

To Messrs. CASSODAY, MERRILL, AND DIXON,

Attorneys for the Respondents.

56

57 *Deposition of I. F. Mack jr.*

UNITED STATES,

Northern District of Illinois:

Be it remembered that, on the nineteenth day of April, A. D. 1871, personally appeared Isaac F. Mack, jr., before me, Philip A. Hoyne, a commissioner appointed by the circuit court of the United States in and for the northern district of Illinois, in the seventh circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., to testify, and in truth to say, on the part and behalf of the , in a certain suit or matter of controversy now depending and undetermined in the United States circuit court for the western district of Wisconsin, wherein Augustus O. Hall, as assignee of the estate of Leonard Lakin, bankrupt, against James Wager and Andrew Fales.

And the said witness being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, did thereupon depose, testify, and say as follows, viz:

1. Int. I reside at Sandusky City, State of Ohio. I know the plaintiff Augustus O. Hall, and Mr. Wager, one of the defendants. I know Mr. Leonard Lakin, the bankrupt in this case. I met Mr. Wager, one of the defendants in the case, at Sandusky City, Ohio, some time in the month of November, A. D. 1869. At that time we had some conversation in regard to the condition and circumstances of the bankrupt in this case, Leonard Lakin. Mr. Wager asked me what I knew about Mr. Lakin's financial condition. I informed him that Mr. Lakin was owing me some borrowed money, which he had agreed to pay in 2, 3, & 4 months; that I regarded Mr. Lakin as perfectly honest, but so heavily involved that it would be a close question whether he could ever work out of it. He asked me generally if I thought Mr. Lakin was able to pay dollar for dollar. I told him I thought if he had time enough he could. He informed me that Mr. Lakin was owing him
58 quite an amount, to the best of my recollection some $2,000 or $3,000; that this amount had been due some time, to the best of my recollection about 2 years; that Mr. Lakin had been putting off the payment from time to time, and that he had made up his mind that he was insolvent. I remarked that I did not agree with him in regard to Mr. Lakin's solvency; that Mr. Lakin had considerable property in his name, and I thought he could pay dollar for dollar of his indebteness; that I had shortly before been at Brodhead, Wisconsin, Mr. Lakin's place of business, and had heard from several of his acquaintances that Mr. Lakin was about ready to fail; that I informed Mr. Lakin of these rumors, and that, as I was one of his creditors, I would like to know from him something about his financial condition. Mr. Lakin assured

me that he had accounts enough due him on his books to pay all his indebtedness. Mr. Wager said he believed he was better informed in regard to Mr. Lakin's condition than I was, and that he believed he would fail in a very short time. He said that if Mr. Lakin was owing me anything, that I had better get it secured; that he should send a man out to Broadhead, Wisconsin, and should get his matter straightened up, and if Mr. Lakin had any property upon which he could get security, he should get a mortgage to secure his claim against him.

Cross-examination:

Before I went to Sandusky, Ohio, I resided at Brodhead, Wisconsin. I settled in Sandusky in April, 1869. Before going to Sandusky I was intimately acquainted with Leonard Lakin. My debt against Mr. Lakin accrued in the month of November, 1868. I went to Brodhead during the last week of October and the first and second days of November, A. D. 1869. The conversation I have mentioned occurred in the store and tin-ware store kept by Mrs. A. E. Gale in Sandusky. She is a sister-in-law, as I understand, of Mr. Wager. There were two or three in the store at the time. We were sitting in chairs in the store;
59 but I do not know whether any one else was paying any attention to the conversation or not. I cannot fix the precise date, but it was some time in the forepart of the day in the latter part of the month of November, 1869. I do not know that I had ever seen Mr. Wager prior to this time. We were in conversation on this and other subjects about an hour. Mr. Wager was introduced to me by Mr. Spencer, (a clerk in the establishment,) a brother of Mrs. Gale, the proprietor of the store. I had gone into the store for the purpose of purchasing a cook-stove, and asked the clerk why he did not keep the American cook-stove. Mr. Wager asked me where I knew about the American. I told him I had advertised it for Mr. Lakin, of Brodhead, and knew the stove well by reputation there. I mentioned Mr. Lakin's name and my residence there. This brought on the conversation about Mr. Lakin's affairs. I made no memorandum of the conversation. Mr. Lakin owed me at this time three notes of $140 each—one due January 1, 1870, and one February 1, 1870, and one due March 1, 1870. I still hold these notes. Nothing has been paid on them. I took these notes of Mr. Lakin in November 1, 1869, at the time I had the conversation with Mr. Lakin about his financial situation. I should say that I am quite positive that it was before I had the conversation with Mr. Lakin that I had taken the notes of him. I did not ask Mr. Lakin to secure the notes.

I. F. MACK, JR.

UNITED STATES,
Northern District of Illinois, ss:

I, Philip A. Hoyne, a commissioner appointed by the circuit court of the United States, and for the northern district of Illinois, in the eighth circuit, under and by virtue of the acts of Congress, do hereby certify that the reason for taking the foregoing deposition, and the fact is, that the witness resides at Sandusky, Ohio, and more than 100 miles from Madison, Wisconsin, where the court, at which this deponent expects this cause will be tried, is appointed by law to be held.

60 I further certify that no notification of the time and place of taking said deposition was made out; but the deposition was taken by mutual consent of both parties.

I further certify that, on the nineteenth day of April, A. D. 1871, I

was attended by D. K. Miller, of counsel with the said complainant, and by J. B. Cassoday, of counsel with the said respondent, and by the witness, who is of sound mind and lawful age, and the witness having been by me carefully examined and cautioned, and sworn to testify the whole truth, the deposition was by me reduced to writing in the presence of the witness, who subscribed the same in my presence; and I have retained the said deposition in my possession for the purpose of transmitting the same by mail to the court for which the same was taken.

I further certify that I am not of counsel or attorney for either of the parties in the said deposition and caption named, or in any way interested in the event of the said cause.

In testimony whereof I have subscribed my name and affixed my seal this nineteenth day of April, A. D. 1871.

[L. S.] PHILIP A. HOYNE,
U. S. Commissioner, Northern District of Illinois.

[5-c't rev. stamp.]

61 The following testimony was received, placed on file and read upon the trial of this cause on behalf of the defendants.

R. H. Rugg.

R. H. RUGG being first duly sworn for defendants, testifies as follows:

Q. What is your name, age, residence, and occupation?

A. R. H. Rugg. I am about 40 years of age. My residence, is Brodhead, Green Co., Wis. I am a wagon and carriage maker by trade.

Q. How long have you resided in Brodhead?

A. I think, about 15 years.

Q. You lived right in the village, and did business right in the village during that time, did you?

A. Yes, sir.

Q. Are you acquainted with Leonard Lakin?

A. Yes, sir.

Q. When, and where did you first become acquainted with him?

A. At Brodhead, when he first came there; I should think, ten years ago.

Q. What was his business when you first became acquainted with him?

A. Hardware business.

Q. There in the village?

A. Yes, sir.

Q. How long did he continue that business? To about what time?

A. Till a little over a year ago, I should think.

Q. About what amount of business did he do, should you judge?

A. I should hardly know what to say. I don't know that I could get very near to estimate it.

Q. Did he do a large or small business?

A. He did a large business for the town.

Q. How long did he do a large business for the town?

62 A. I should think—I did think he was doing a large business for the town during most of the time that he was there.

Q. Was you acquainted with his general reputation for pecuniary responsibility there in Brodhead, during the time he did business there?

A. I was considerably well acquainted.

Q. What was that reputation, during 1869?

A. It was generally good. I would consider it so.

Q. What was his reputation for honesty there in the community—for integrity, as a business man during that year?

A. Generally good.

Q. How did his reputation for pecuniary responsibility during the year 1869 compare with it during the year 1868, previously?

A. In my estimation, it was equal.

Q. Was there any time during the year 1869, or any time previous to that year, that you would have refused to sell him goods on credit, if he desired it.

A. No, sir. There was no time when I would have refused him any amount of goods I had in my possession.

Q. Without security?

A. Yes, sir; I shouldn't have asked it.

Q. How do you think it would have been with the people there generally as to selling him property on credit during 1869, or previously?

A. I think they would have done it.

Cross-examination:

Q. Do you know of Mr. Lakin's building a new store in Brodhead?

A. I knew of the store being built, and that he had the reputation of building the store?

Q. When was that store completed?

A. I should think it was completed in the fall of 1868, or fore part of the following winter.

Q. Do you know what that building cost?

A. No, sir; I do not.

Q. Do you know where Mr. Lakin got the money that went
63 into that building?

A. I supposed, during the construction of the building, that his father-in-law furnished the money.

Q. What was his father-in-law's name?

A. A. P. Hayner.

Q. Do you know of Mr. Lakin executing a mortgage to his father-in-law upon that building and property?

A. I have no personal knowledge of it, sir.

Q. What, in your opinion, did that building cost?

A. I should think, very likely, it cost $6,000.00.

Q. You have stated that you supposed his father-in-law furnished the money for the erection of that building; what reasons or facts have you for supposing so?

A. One reason would be, that Mr. Hayner was there, and attended to the job for him, seemingly as though it was his own.

Q. Any other.

A. I recollect Mr. Hayner's making a remark at one time, that it was drawing on him pretty heavily.

Q. At what time did you hear Mr. Hayner make that remark?

A. I should think it was after, or about the time the brick-work was done.

Q. Was not Mr. Lakin able, in your opinion, to have erected and completed that store-building without any damage to his business as a merchant?

A. I should have had my doubts about it.

Re-direct:

Q. Was you a member of the school-board of the village of Brodhead at any time?

A. Yes, sir.

Q. During what time?

A. I have been a member during all the time we have had a special charter, and still am a member.

Q. Who are now members of the board?

A. H. B. Stewart, H. T. Moore, Leonard Lakin, Dr. L. E. Toure, Reuben Golden, and myself.

Q. Is that the Leonard Lakin you have spoken of in your testimony?

64 A. Yes, sir.

Q. How long has Mr. Lakin been a member of that board?

A. About four years.

Q. Was he, at any time, treasurer of the district?

A. Yes, sir.

Q. During what time?

A. He was treasurer of the district, if I recollect, during the first two years of the charter, and while the new school-house was being built.

Q. How frequently was the treasurer elected?

A. I don't know; but Lakin was re-elected I remember.

Q. Was there any great dissatisfaction with Mr. Lakin, as treasurer of the district, using money of the district?

A. There was not.

Q. Did the treasurer have any compensation for being treasurer except the using of the money?

A. Nothing that I recollect of.

Q. Was it not understood by the board that the treasurer might use any money in his hands?

A. I don't think there was ever any action of the board as to that, as a board; as an individual member of the board, I supposed he used the money.

Q. Did other members suppose so, too?

A. I think they did.

Q. Was that the general understanding?

A. I could not say as to that. It was thought, by members of the board, that it was sufficient compensation to do so.

Q. Do you recollect that, in the spring of 1869, when Mr. Lakin's name was mentioned as a candidate for re-election as treasurer, that there was a tie vote of the board?

A. Yes, sir.

Q. Do you recollect that it was used as an argument for appointing a new man, by members of the board, that Mr. Lakin had had the use of the money of the district for some time, and therefore the board ought to give it to some one else?

A. I remember hearing talk of that kind by members of the board.

65 Re-cross-examination:

Q. Did Mr. Lakin, to your knowledge and with your consent and approval as one of the board, use the funds of the district?

A. I supposed he used the funds, and I never objected to it.

Q, Has he ever, and when, paid back the amount taken by him?

A. He has. I couldn't say when.

Q. How long before his failure was it that he paid the money over?

A. I couldn't say, sir.

Q. Was a committee appointed to settle and adjust the account with him?

A. I think there was. I am not positive, but I think there was.

Q. What amount of the school fund did he appropriate to his own use?

A. I don't know.

Q. Was not the sum over $1,000?

A. I couldn't say.

Q. Didn't you, as a member of the board, take interest enough in the matter to ascertain the amount of the defalcation?

A. I don't know how much interest it would take to keep posted at all times as to how much money the treasurer used, or how much there was in the treasury. I was not on the committee, if there was a committee. I was not aware that there was a general uneasiness in the board on account of the money in his hands. For my own part I felt no uneasiness.

Q. When, or about when, did you first hear that Mr. Lakin was using the money of the district? State the time as nearly as you can.

A. I don't know that I heard it. I supposed he was using it, and if I had heard it, I don't know that I should have paid any attention to it.

Q. Did you know anything of the amount of Mr. Lakin's indebtedness in the year 1869?

66 A. No, sir.

Q. Did you know anything of the amount of stock and merchandize which he had on hand in the year 1869?

A. He didn't carry as heavy a stock as he had carried apparently, and that's about all I know about it.

Q. Did you sell him any goods in 1869?

A. I sold him a wagon. I am not certain it was in 1869. It was not far from that time.

Q. Then you never had any large amount of dealing with Mr. Lakin?

A. Not in the way of selling him goods.

Re-direct:

Q. Were not the school-board in the habit each year of appointing a committee to look over the accounts of the treasurer, and settle with him?

A. That is my impression that they did. There have been two committees appointed at any rate, and, I think, one every year.

Q. Didn't you suppose during the first term that Mr. Lakin was treasurer, and before he was re-elected, that he used the money of the district?

A. Yes.

R. H. RUGG.

67 *S. M. Gosling.*

S. M. GOSLING, being first duly sworn for defendants, says:

Q. What is your name, age, residence, and occupation?

A. My name is S. M. Goslin. My age is 46 years. I reside at Brodhead, Green County, Wisconsin. I am a blacksmith.

Q. How long have you lived in Brodhead?

A. Twelve years last June.

Q. Do you know Leonard Lakin?

A. Yes.

Q. Have you, during that 12 years, lived there in the village?

A. Yes, sir.

Q. When and where did you first become acquainted with Mr. Lakin?

A. At Brodhead, when he first came there, nine or ten years ago.

Q. What was his business when you first became acquainted with him?

A. Hardware.

Q. There in the village?

A. Yes, sir.

Q. How long did he continue that business?

A. Until a little over a year ago.

Q. Did he do a large or a small business?

A. I thought he did a very large business for the place.

Q. How long had he done a large business for the place?

A. For three or four years. The last three or four years he was there.

Q. Was you acquainted with his general reputation for pecuniary responsibility there in Brodhead during the time he was there?

A. I thought I was.

Q. What was that reputation during 1869 and previously?

A. I thought it was good.

Q. Was you acquainted during the time when he was in Brodhead with his general reputation for honesty and integrity in business?

A. I was.

68 Q. What was that reputation?

A. Good, so far as I know.

Q. How did his reputation for solvency during the year 1869 compare with it during the year 1868 & previously?

A. Favorably, I should think. There was not much difference that I know of.

Q. Was there any time during the year 1869, or the previous year, that you would have refused to sell him goods or property on credit if he desired it?

A. No; there was no time.

Q. Without security?

A. Yes.

Q. How do you think it would have been with people there generally as to selling him things on credit during the year 1869 or previously?

A. I don't think there would have been any trouble in his buying personal property. In selling real estate I think it is customary to take security back of any body.

Cross-examination:

Q. Did you ever sell any property or goods to Lakin?

A. Not of late years. I sold him a horse once, several years ago.

Q. Did you ever buy any considerable amount of goods at one time of Lakin?

A. I don't remember of buying more than $100 worth at one time.

Q. Did you ever hear the report in Brodhead that Mr. Lakin had taken the funds of the district and used them in his business?

A. I heard such a report within a few weeks past of Squire Mack.

Q. Did you know prior to that time, by report or otherwise, that Mr. Lakin had used the moneys of the district in his business?

A. I have heard such report, but not till after Mr. Lakin failed.

69 Q. When did Mr. Lakin fail?

A. In 1869, I believe; 1869 or 1870, I don't know which.

Q. Did you know of Mr. Lakin building a large store in Brodhead?

A. Yes.

Q. What is the size of that store, and of what material is it built?

A. 22 by 80; it is built of brick and is three stories high.

Q. Do you know the cost of that building?

A. I should think it cost from six to seven thousand dollars.

Q. Does that include the cost of the lot on which it stands?

A. I should think $7,000 would include it all.

Q. When was that building completed?

A. I think in 1868.

Q. What time in 1868?

A. The fall.

Q. How soon after the completion of that bulding was it that you heard that Lakin had used the money of the district?

A. I don't know that I can say, exactly; I should think it was a year or more.

Q. Wasn't it the subject-matter of conversation in Brodhead in the early part of 1869.

A. I think not.

Q. Wasn't a committee appointed to investigate that defalcation in the early part of 1869?

A. Not that I know of.

Q. Was it before or after Lakin's failure that you heard of the defalcation?

A. It was after; I don't think I heard much about that till last week. Squire Mack's report is the most I ever heard.

Q. What had you heard prior to any think that Squire Mack said about the defalcation?

A. I don't remember hearing anything in particular about it—any thing that I could charge my mind with.

70 Q. You have stated in the course of your cross-examination that you had heard that Lakin had used the money of the district prior to Mack's speaking about it, have you not?

A. Yes.

Q. State as near as you can the time, when, and from whom, aside from Squire Mack, you had heard that Lakin was so using the money of the district?

A. I heard it talked over about the time of the election of officers in the spring of 1869, that he had used the money of the district, and it was time to change around and give some one else the use of it.

Q. Was that a common subject of conversation at that time in Brodhead?

A. I don't know as it was; I heard several speak about it.

Q. Did Mr. Lakin resign his office as treasurer after that?

A. I heard so; I don't know anything about it.

Q. Do you really think it is honest for the treasurer of a district to use the funds of the district for his own private purposes?

A. I think it would if he could replace it when the district wanted it. I always used money in my hands belonging to any body if I could replace it when wanted.

Q. Was you ever at any time treasurer of a school-district?

A. No.

Q. Does then your opinion of the honesty of the transaction depend upon the fact that the treasurer will repay the money when demanded?

A. I don't think it would make any difference with a man's honesty if he thought at the time he could replace it. A man might fail to make a payment that he thought he could make.

71 Re-direct:

Q. Was it not about the first of January, 1870, that Mr. Lakin failed?

A. Somewhere about that time.

Q. Did not Lakin own the lot on which the block was built prior to the building of the store?

A. I so understood.

Q. What was the feeling of this man Mack, I mean the old gentleman, towards Mr. Lakin during 1868, and 1869, & since?

A. He has been very bitter against him.

Re-cross-examination:

Q. Do you know anything of the amount of the indebtedness of Lakin in the latter part of the year 1869?

A. Only what I have heard since the failure.

Q. Did you have any knowledge in the latter part of 1869 of the amount of Lakin's indebtedness?

A. I did not.

Q. Did you then know whether Lakin had paid or not for the store?

A. No.

Q. Did you then know from report or otherwise in Brodhead where the money came from which went into that store?

A. I heard several speak of it that they supposed Mr. Hayner furnished the money.

Q. Did you in fact know anything of the actual pecuniary responsibility of Lakin in the fall of 1868?

A. I don't know as I did.

Q. Was Mr. Lakin, in your opinion, able to have erected and completed the store-building without any damage to his business as a merchant?

A. I think he couldn't.

72 S. M. GOSLING.

73 At 12 o'clock m. adjourned till 2 p. m. At 2 p. m. parties appeared.

John Taylor.

JOHN TAYLOR, being first duly sworn, on oath says, for defendants:

Q. What is your name, age, residence and occupation?

A. My name is John Taylor. My age is 46 years. My residence is Brodhead, Green county, Wisconsin. I am a tin-smith.

Q. How long have you resided at Brodhead?

A. About 12 years.

Q. Are you acquainted with Leonard Lakin?

A. Yes, sir.

Q. When and where did you first become acquainted with him?

A. In Brodhead, about 10 years ago or 11 years. I am not certain which.

Q. What business was he in at the time?

A. Hardware.

Q. How long did he continue in that business?

A. Something like 10 years, up to January, 1870.

Q. How intimately did you know him?

A. I was with him the most of the time in the store, employed by him. The first year I was there I was foreman in his tin-shop, and I attended the store a part of the time when he was absent. I commenced to work for him in the store when he commenced business in Brodhead, and continued to work for him until his failure.

Q. What amount of stock did he usually carry while in business there at Brodhead?

A. The last eight years he was in business he carried about eight to nine thousand dollars. Prior to that his stock was not as large. His stock increased in war times and at that time he had a larger stock than he did afterwards.

74 Q. Do you recollect of his taking an inventory of his stock in 1868 or 1869?

A. Yes, sir; I think it was about—I couldn't say exact time—I think a couple of months before he broke up.

Q. Do you recollect of his taking an inventory before he sold the stoves, say 1867 or 1868?

A. Yes, sir.

Q. Do you recollect the amount of his stock at that time?

A. No, I do not.

Q. Did Mr. Lakin do a large or a small business?

A. He sold a good many goods and did a good business.

Q. Do you know the extent of his sales each year, annually?

A. I should think from $30,000 to $35,000 per year, sometimes over $30,000 and sometimes less. I don't think it ever went as high as $35,000.

Q. During what time do you think his sales would run between $20,000 and $35,000?

A. During the last 7 years that he did business I think.

Q. How did you regard him during 1868 & 1869, pecuniarily responsible or otherwise?

A. I considered him pecuniarily responsible.

Q. Was you acquainted with his general reputation in Brodhead for pecuniary responsibility during the time you was with him?

A. I was.

Q. What was that reputation?

A. Good.

Q. Was he regarded solvent or insolvent during the year 1869?

A. Solvent.

Q. How was it previously

A. All right; he had no trouble in getting goods.

Q. How did his reputation and standing in the community compare with previous years?

A. About the same.

Q. Was you acquainted with his general reputation in Brodhead, during the time you were with him, for honesty and integrity?

75 A. I was.

Q. What was it?

A. Good.

Q. How did it compare in 1869 with previous to that time?

A. There wasn't much difference.

Q. Did you at any time during the year 1869 or previously have any doubt about his ability to pay all his debts?

A. No, sir.

Q. Or about his ability to continue business?

A. No, sir.

Q. Did he during the year 1868 or 1869, have any difficulty in obtaining goods on credit?

A. No, sir.

Q. Or obtaining any credit?

A. No, sir.

Q. Did he have any difficulty in getting goods on credit?
A. He could get all the goods he wanted.
Q. Was there any time during the year 1869 or previously, that you would have refused to sell him goods on credit if he wanted it?
A. No, sir.
Q. Without security?
A. Yes, sir.
Q. How do you think it would have been with the people there generally as to getting property on credit?
A. I don't think he would have had any trouble at all.
Q. You think they would have sold to him?
A. Yes, sir; personal property; of course on real estate every body expects security.
Q. You recollect the fact of his being treasurer of the school district?
A. Yes, sir.
Q. Do you know H. B. Stewart?
A. Yes, sir.
Q. Do you recollect the fact of his calling on you to get some
76 money out of the treasury in the absence of Mr. Lakin?
A. I do.
Q. Do you remember where Mr. Lakin was then?
A. Milwaukee.
Q. State what occurred between you and Mr. Stewart at the time.
(Objected to by pl'ff as hearsay, no foundation having been laid for it.)
A. Mr. Stewart came into the store and wanted to know where Mr. Lakin was. I told him that he had gone to Milwaukee. He wanted to know if I could pay a school order. I asked him if he wanted it, and he said no; not particularly. He asked when Lakin would be home, and I told him in two or three days, and I told him if he wanted the money I would go and get it for him. He said no, it would do just as well when Lakin got back.
Q. Do you know the circumstances under which Mr. Lakin discovered his true condition at the store there, at the time of his failure?
A. Yes, sir.
Q. State what they were.
A. Mr. Lakin was absent from home. He went away on Saturday to his father-in-law's at Woodstock, Ills. On Monday or Tuesday, Mr. Hall and Mr. Cole came to see him. Mr. Hall represented John Nazro, and Mr. Cole Messrs. Pierce and Whaling, of Milwaukee. Mr. Hall asked me if I had heard the report. I told him I had not. He said the report was that Mr. Lakin had made an assignment to his father-in-law, and asked me if it was true. I told him I had heard such a report; but that I didn't think there was anything in it. I told him Mr. Lakin had gone down there to spend the week, and I didn't know what day he would be back. That he might be back the last of the week, and he might be back Wednesday. They wanted me to get them some money, particularly
Mr. Cole. I told them I couldn't; that they had better wait till
77 Mr. Lakin came home. They said they were going to stop the rest of the week, and I told them that I would drop Mr. Lakin a line. I wrote to Mr. Lakin stating that Mr. Hall and Mr. Cole wished to see him, and also stated the report which was in circulation, and stated to him that he had better come home as soon as possible. Mr. Cole and Mr. Hall then took the train and started for Woodstock, and met Mr. Lakin on the way, in Janesville or somewhere, and the three came back together. When they came back they came in and talked

the matter over, and demanded a statement of Mr. Lakin. Mr. Hall had previously got a statement from Mr. Mack, and came back from Mack's and got a statement from Lakin. After they had got the statement from Mr. Lakin they went around town to the various stores and inquired about Lakin's condition. I don't know what was done after that.

Q. Do you know whether as a result of that investigation Mr. Lakin found out the amount of his indebtedness?

A. No, sir; I think he did not.

Q. Do you know whether as a result of that investigation he found out nearly the amount of his indebtedness?

A. I don't think that he did. It was enlarged afterwards.

Q. Did he subsequently find out about the amount of his indebtedness?

A. I think he did.

Q. How soon?

A. I think in the course of two weeks.

Q. Do you recollect what Lakin went to his father-in-law's for? Any particular days?

A. He went to spend the holidays.

Q. Was there any time prior to this investigation that took place that you have mentioned, when you had any doubts that Lakin was perfectly able to pay all his debts?

A. No, sir.

Q. How much money did Hall or Cole want?

A. They didn't say. Pierce and Whaling's bill was something like $300. I don't know how much Nazro's bill was. He had been having goods right along of Nazro.

78 Cross-examination:

Q. How many clerks or employees did Lakin have connected with his business in Brodhead in the year, 1869?

A. Three.

Q. Who were they?

A. Alvin Hayner, Louisa Haynor, and myself.

Q. Were the two Hayners, in his employ, any relation to Lakin, and if so, what?

A. They were; brother-in-law and sister-in-law.

Q. How long or about how long prior to 1869 had the two Hayners been in his employ?

A. Alvin had been there, I think, about a year, and Louisa seven or eight years—nearly all the time since he had been in business.

Q. Was Louisa Hayner his book-keeper?

A. She was.

Q. What were the particular duties which you had in the business in the year 1869?

A. Attending to the stock, keeping the store right, and salesman, and outside business—that is, collecting.

Q. What was his business (Lakin's) in the year 1869?

A. He was in the hardware business.

Q. Did he sell at wholesale or retail?

A. Retail.

Q. What was the amount of his sales in the year 1869?

A. I couldn't exactly tell. It was in the neighborhood of $25,000.

Q. What proportion of that amount was on credit?

A. I presume two-thirds.

Q. Did the business increase or decrease in the latter part of 1869?

A. Decreased, I think.

Q. How were collections for the last four months of 1869?
A. Poor.
Q. Did Mr. Lakin during the last six months of the year 1869 borrow any money to carry on his business?
A. He did.
Q. To what extent did he borrow?
A. He borrowed $500 of me at one time, and $65.00 at another
79 time.
Q. For how long time did he borrow that money?
A. It was put on demand; no particular time.
Q. When was it borrowed?
A. Some time in August or September, 1869.
Q. Did he pay it, and when and how?
A. He did not.
Q. Has it never been paid?
A. No, sir.
Q. Do you know of his borrowing of any other parties, and who, to carry on his business in 1869?
A. Yes, sir; of different parties. I couldn't say. I borrowed the money myself for him.
Q. Did you take charge of the finances of the concern, attend to the payment of its debts and the collection of its accounts?
A. I did not when Mr. Lakin was there.
Q. Did you when he was absent?
A. Yes, sir.
Q. What amounts of money did you borrow for Mr. Lakin to pay debts for the last six months of the year 1869?
A. I could not say now.
Q. State as nearly as you can the amount?
A. Probably $1,000, including what I let him have, and I don't know but more.
Q. Did Mr. Lakin purchase the larger part of his goods on credit?
A. He did.
Q. What amount of goods did he purchase in the year 1869?
A. I couldn't say.
Q. State the amount as near as you can, Mr. Taylor?
A. I presume somewhere in the neighborhood of five or six thousand dollars.
Q. Was it or not the fact, that for the last six months of the year 1869, Mr. Lakin was hard-up in his business?
A. Yes, sir.
Q. That was well known to you, was it not?
A. It was.
80 Q. What was the occasion of his being so hard-up during those last months of 1869?
A. I suppose it was owing to the fact that he had outside property that he couldn't sell, and he had some $6,000 accounts that he could not collect.
Q. That state of things continued with him down to the day of his failure, didn't it?
A. Yes, sir.
Q. It kept gradually growing worse and worse, didn't it?
A. Yes, sir.
Q. Do you think taking his property in the condition in which it was, the dul'ness of trade, the impossibility of making collections, that Mr.

Lakin could at any time during the year 1869, pay his entire indebtedness?

A. I did think that he could pay his debts at that time and have something left; that is at the time before he failed, from my knowledge of his business.

Q. Was his property in 1869, such that it could have been sold in the usual way of selling property?

A. I don't think it could have been sold without a sacrifice.

Q. Was trade dull during the whole of the year 1869?

A. It was.

Q. Were collections slow, and was it almost impossible to collect accounts during the larger part of 1869?

A. It was, without forcing.

Q. Was Mr. Lakin during the same period of time, to wit, during the year 1869, largely indebted?

A. He was. Since he failed I have learned that he owed much more than I then supposed he owed. Of course, if I had known that he owed so much I should not let him have the money that I did.

Q. State now what reasons you had, if the facts were as you testify they were, as to the condition of his property, the dul'ness of trade, the difficulty of collections for believing that Lakin during all the year
81 1869, was solvent and able to pay his debts and have something left?

A. I didn't know his indebtedness in 1869.

Q. How much did you suppose he owed in 1869?

A. I didn't know. I had no reason to know. He didn't tell me. I didn't even know what he owed John Nazro.

Q. Didn't you know that he was owing Wager & Fales, of Troy, New York?

A. I did not. I did not suppose he owed them a dollar.

Q. Were not bills coming in for payment, from time to time, during the year 1869, which Mr. Lakin was unable to pay?

A. There was.

Q. Didn't that fact of itself create any suspicion in your mind as to his condition?

A. Yes, but I still thought he had property enough, properly managed and collections made, to pay all his debts.

Q. You was with Lakin when he built his brick store, was you not?

A. Yes, sir.

Q. When was that store completed?

A. In the fall of 1868.

Q. Had Lakin, after the completion of that store, sold out that portion of his business which belonged exclusively to the stove department?

A. No. He sold it before.

Q. When did he sell out the stove department of his business?

A. In 1867 or early in 1868.

Q. Did he engage in the stove business any after that sale?

A. No, sir.

Q. Do you know of whom he purchased his stoves when he was in the stove business?

A. Yes, sir.

Q. From whom did he purchase his stoves?

A. Wager and Fales, mostly.

Q. Did you suppose that, after he sold out the stove department, that he then paid Wager and Fales?

A. I supposed he had.

82 Q. Did you ever learn, and, if so, when, that he had not paid Wager and Fales?

A. I did not know it till he failed.

Q. Do you know what that brick store cost Mr. Lakin?

A. Somewhere in the neighborhood of $8,000, I suppose, land and all.

Q. Did the building of that store in any way interfere with or cripple the business of Mr. Lakin?

A. I presume it did.

Q. Was it not the fact that, after the erection of that store, Mr. Lakin was hard-up in his business?

A. He was.

Q. Was not that owing, to some extent, to his erection of that building?

A. I think it was.

Q. Did you ever examine the books of Mr. Lakin to ascertain his indebtedness prior to his failure?

A. I did not.

Q. Did Mr. Lakin ascertain from his books, to your knowledge, the amount of his indebtedness?

A. He did not, to my knowledge.

Q. Do you know in what way Mr. Lakin ascertained his indebtedness?

A. I do not personally; only by hearsay.

Q. You stated, did you not, on your direct examination, that he made out a statement of his condition to Mr. Hall?

A. Yes.

Q. How or in what way did Mr. Lakin make up that statement that he gave to Mr. Hall?

A. I couldn't say.

Q. Do you recollect the amount of indebtedness that that statement showed Mr. Lakin owed at that time?

A. I don't remember, but it was somewhere about $25,000.00.

Q. What amount of assets at that time did Mr. Lakin represent to Mr. Hall that he had?

83 A. I couldn't tell.

Q. Did you know anything about Wager and Fales getting security for their debts?

A. I did not.

Re-direct:

Q. How did the amount of Mr. Lakin's indebtedness, as ascertained after his failure, compare with the amount which you had previously supposed he was indebted?

A. It was about $4,000 to $5,000 difference.

Q. How much did you suppose he was indebted prior to his failure?

A. I did not suppose he was indebted over $15,000.00 with what knowledge I had.

Q. How much was the total amount of his indebtedness as he figured it up himself after his failure?

A. I think it was $29,000.00—somewhere in that neighborhood.

Q. That was nearly double what you supposed it was previously, was it not?

A. Yes, sir.

Q How came you to state that it was only $4,000 to $5,000 difference between what you supposed it was and what you found it to be after his failure?

A. The first statement which he made for his creditors, that is, the first circular, was about $25,000.00, and afterwards it was increased $4,000 or $5,000. I thought you was inquiring about these circulars when I stated the difference was $4,000 or $5,000.

Q. Was Alva or Louisa there at the store at the time Hall and Cole came out there to investigate?

A. No, sir. They were at their father's, spending Christmas and New Years.

Q. Did you take any security for the $500.00 or $65.00?

A. I took no security for either. I took a note on demand for the $500. The 65.00 I deposited in the safe. I put it on Lakin's cash-
84 book. It was deposited for another man, and went into Lakin's cash; and when the man called, he was to have it.

Q. How did you come to let Lakin have this money? Did he ask you, or did you offer to lend it to him?

A. I offered to lend it to him.

Q. Was he present when you deposited the $65.00?

A. He was. It was money that I wanted to pay interest, and I deposited it there for that purpose, and Lakin had it.

Q. Did you understand Mr. Finch when you answered him that the whole amount of goods that Lakin bought during the year 1869 was $5,000 or $6,000?

A. Yes, I understood the question.

Q. Have you any definite knowledge of the amount of goods that did come into the store?

A. Not the amount. It might be $6,000 or it might be $10,000. I can't tell better—$3,000 perhaps.

Q. Did you think, in 1869, that Mr. Lakin was any harder-up for money than merchants generally were? Did you then think?

A. I thought he wasn't any harder-up than his neighbors.

Q. Do you know of Mr. Hayner's furnishing any money to go into the building there?

A. Yes.

Q. Do you know how much?

A. No. He gave checks for money; he furnished about $3,000, I understand. He (Mr. Hayner) worked on the building—I mean Andrew P. Hayner. I think I am wrong in my estimate of $6,000 as the amount of goods purchased during 1869 by Mr. Lakin. It will overrun that, and be nearer $10,000.00.

Q. Do you know whether or not Mr. J. F. Mack's feelings towards Mr. Lakin were friendly during 1868 & 1869?

A. They were not.

85 Q. Do you know what the feelings of Mr. H. B. Stewart, of Brodhead, were towards Mr. Lakin?

A. About the same as Mack's.

Q. Do you know what the feelings of B. R. Clawsen were towards Mr. Lakin during that time?

A. About the same as Mack's and Stewart's.

Q. Do you know the cause of such feelings?

A. Because Mr. Lakin went down into another street to build his store. I suppose that was the reason. They were always friendly before that. As regards to Mack, it might have been some church matters.

Re-cross examination:

Q. What are your feelings towards Mr. Lakin?

A. We never had any words. We have always been good friends.
Q. Has Mr. Lakin been present during all of your examination?
A. No, sir. I think not the whole time. He has most of the time.
Q. Were Mack and Lakin members of the same church?
A. Yes.

JOHN TAYLOR.

At 6 p. m., adjourned till 9 a. m., March 2, 1871. At 9 o'clock a. m., Thursday morning, March 2, 1871.

Louisa Hayner.

LOUISA HAYNER, being first duly sworn for defendants, testifies as follows:

Q. What is your name, age, and present residence?
A. My name, Louisa Hayner. My age is 26 years. My present residence is Madison, Wis.
Q. You are daughter of the defendant, Andrew P. Hayner?
A. Yes.
Q. And a sister of Mrs. Leonard Lakin?
86 A. Yes.
Q. Do you know of Mr. Lakin's doing business in Brodhead, Green Co., Wis.?
A. Yes.
Q. About when did he commence business there?
A. I couldn't tell. I think 9 or 10 years ago.
Q. What business was he in there?
A. Hardware.
Q. How long did he continue in that business?
A. About 10 years—till about January, 1870.
Q. Was you in his employ during any of that time?
A. Part of it.
Q. About how long?
A. About four years.
Q. During the last part?
A. Yes, sir.
Q. What were your particular duties while you were in his employ?
A. To post accounts from the day-book into the ledger.
Q. What was his day-book an account of?
A. Sales trusted out each day.
Q. Were your duties anything else?
A. I filed bills, and made out bills to customers.
Q. What do you mean by making out bills to customers?
A. Bills against people who had accounts on the books in favor of Mr. Lakin.
Q. Did you have anything to do with the cash account?
A. No, sir.
Q. Do you know the fact of Mr. Lakin's building a store?
A. Yes, sir.
Q. Who had charge of and managed the building?
A. My father.
Q. Do you know whether your father let him have any money to put into the building?
A. Yes, sir; he did.
Q. About what amount?
A. $3,000.

87 Q. Do you know what Mr. Lakin built the store for?—to rent or occupy himself?

A. To occupy himself, I understood.

Q. Do you know whether he was intending to occupy that store as a hardware merchant, and make the hardware business his permanent business?

A. I always supposed that was his purpose.

Q. Did you ever, during the year 1869, or any other time prior to Mr. Lakin's failure, about the first of January, 1870, suppose that he was going to fail in business?

A. No, sir. I did not.

Q. Did you, prior to that time ever think or suppose that Mr. Lakin would be unable to pay all his debts?

(Obj. by pl'ff on account of the words "think" and "suppose.")

A. No, sir.

Q. Did you, prior to about the first of January, 1870, know the amount of Mr. Lakin's indebtedness?

A. No, sir.

Q. Did you have any opinion as to the amount?

A. No, sir.

Q. Did you ever, in connection with Mr. Lakin or otherwise, examine into his affairs, or investigate the same with a view of ascertaining the amount of this indebtedness, or the amount that he was worth, or the condition of his affairs?

A. Never, on his indebtedness, but we had on what was due him.

Q. What did you look up the amount due him for? For what purpose?

A. To see how much was standing out on the books.

Q. Any other purpose?

A. No, sir.

Q. Did you ever, during 1869, or any other time, say anything to your father in regard to the amount of Lakin's indebtedness?

A. No, sir.

Q. Or the amount he was worth?

88 A. No, sir.

Q. When was the first that you learned that Mr. Lakin was insolvent?

A. At Christmas time, when we were all home.

Q. What did you hear then?

A. We heard from Brodhead. A gentleman from Brodhead came there.

Q. What news did he bring?

A. I don't know that I can just exactly tell. It was to this effect: That Mr. Lakin had failed.

Q. Did you go back to Brodhead after that?

A. Yes.

Q. Did you go to work in the store for Mr. Lakin?

A. No, sir.

Cross-ex.:

Q. Who assisted you in keeping the books of Mr. Lakin?

A. Not any one.

Q. What books did Mr. Lakin keep as a merchant?

A. He kept a day-book, ledger, and cash-book.

Q. Did he keep an invoice-book?

A. Yes, sir.

Q. Did he retain the invoices of his purchases? Did he keep them, and file them away?

A. Yes, sir.

Q. How or in what way did he keep his merchandise account? Did he open his account with each creditor, or keep a general account under the head of merchandise account?

A. He kept it with each one.

Q. During the four years that you were with Mr. Lakin, did he purchase the most of his goods on credit?

A. On credit.

Q. What, generally, was the length of time on which he purchased his goods?

A. I don't know.

89 Q. Did you assist in looking over the invoices or bills of purchase?

A. No, sir.

Q. Was it not the habit and custom in Mr. Lakin's store to examine the invoices on the arrival of the goods?

A. Yes, sir.

Q. Who did that business in that store?

A. Mr. John Taylor, as a general thing.

Q. Assisted by any one; and, if so, whom?

A. No one, unless Mr. Lakin assisted him.

Q. Who made the entries on the books of the amounts of the purchases?

A. Mr. Taylor, as a general thing.

Q. Who made the entries in the cash-book?

A. Mr. Taylor and Mr. Lakin.

Q. Were the books so kept in that business that they would show the amount of goods which came into the store, and also the amount of money received on the sale of goods?

A. Yes, sir.

Q. Were the entries in the cash-book made from day to day?

A. Yes, sir.

Q. Did Mr. Lakin, during the year 1869, do a large credit business?

A. I don't know.

Q. Did you not keep the account, by carrying from the day-book on to the ledger, of the goods sold on credit?

A. Yes, sir.

Q. Are you not able to state, then, whether during the year 1869 Mr. Lakin did a large credit business?

A. Yes, sir; I think he did.

Q. Did Mr. Lakin make any very large purchases of goods in amount in the year 1869?

A. I don't know.

Q. W*as* you not in the store the most of the time during the year 1869?

A. Yes, sir.

90 Q. Don't you know whether Mr. Lakin was in the habit of receiving goods from time to time during the year 1869?

A. I know he received goods, but I don't know the amount.

Q. Did he, in your opinion, receive as many goods into the store in 1869 as he received the year previous?

A. I don't know.

Q. Was business as good in the year 1869 in Brodhead with Mr. Lakin as the year previous?

A. I should think not, and still I don't know.

Q. Was not Mr. Lakin owing more money in the latter part of the year 1869 than he owed in the year 1868?

A. I think he did.

Q. How much more do you think he owed in the latter part of the year 1869 than he owed in 1868?

A. I don't know.

Q. Is it not the fact that Mr. Lakin was embarrassed for money to meet his paper promptly at maturity in and during the year 1869?

A. I don't know.

Q. What knowledge had you of Mr. Lakin's business in the year 1869?

A. Mostly of what was due him.

Q. Did you know at all in 1869 how much Mr. Lakin owed?

A. No, sir.

Q. Were not collections very slow in and during 1869?

A. Yes, sir.

Q. Don't you know of Mr. Lakin's having to borrow money to meet his paper as it matured in 1869?

A. I knew of his borrowing, but the amount I did not know.

Q. Now, is it not the fact, Miss Hayner, that Mr. Lakin was frequently pressed for money during the year 1869 to meet his liabilities?

A. I think he was.

Q. Is it not the fact that in and during the year 1869 he was really hard-up for money to meet his liabilities?

91 A. Yes, sir.

Q. When did Mr. Lakin complete his new brick store?

A. In the fall of 1868, I think.

Q. What did that store cost Mr. Lakin?

A. I don't know.

Q. Did you hear him say at any time prior to his failure what that store cost?

A. I have heard him say nearly what it cost.

Q. What did he say on that subject?

A. I don't remember.

Q. Was your father in Brodhead at or during the time the store was being built?

A. Yes.

Q, Most of the time?

A. Yes, sir.

Q. Did he superintend or have anything to do with the erection of the store building?

A. He had charge of it.

Q. You have stated in your direct examination that your father loaned Mr. Lakin $3,000. How do yon know that he did?

A. Because it was entered on the books to that effect.

Q. Whose books?

A. Mr. Lakin's.

Q. Who made the entries on Mr. Lakin's book showing the loan?

A. Mr. Lakin.

Q. Did you see him make the entries?

A. No, sir, I don't think I did.

Q. How do you know that Mr. Lakin made the entries?

A. By his handwriting.

Q. Did you see the entries at or about the time they were made?

A. Yes, sir.

Q. When, or about when, were those entries made on the book?

A. During the building of the store. I don't know the date.

92 Q. How did you happen to see or know of those entries in Mr. Lakin's books?

A. They were put into the day-book as charges against the brick store, and I entered them into the ledger.

Q. Was it then your duty to transcribe from the day-book all the entries on the day-book into the ledger?

A. Yes, sir.

Q. Did you do it?

A. Yes, sir.

Q. Do you know of your father's taking a mortgage from Mr. Lakin to secure the payment of Mr. Lakin's indebtedness to him?

A. I knew that he took a mortgage, but I understood that he took the mortgage to put into his business in Woodstock.

Q. Whose business in Woodstock?

A. My father's.

Q. How did you understand, and from whom did you understand that your father took that mortgage for the purpose of going into his business in Woodstock?

A. Mr. Lakin told me the first I heard of it.

Q. Did you understand how and in what way he was to use that mortgage in his business at Woodstock?

A. I understood he was going to raise money on it, but how I don't know.

Q. Was your father present when that mortgage was executed?

A. I don't know.

Q. How far did your father live from Brodhead?

A. About 60 miles, I think.

Q. Was there communication by rail all the way?

A. Yes, sir.

Q. Was Mr. Lakin in the habit, during the four years you were with him, of taking an inventory of his stock and striking a balance on his books?

A. I think he was in the habit of taking an inventory once a year, but I don't know about his striking a balance.

93 Q. At or about what season of the year did he take an inventory?

A. In the fall, I think.

Q. Did he, in the taking of that inventory, put down the amounts due to him exactly as they appeared on the books?

A. Yes, sir.

Q. Did he, in the taking of that inventory, estimate his goods at their cost in Brodhead, or what valuation did he put upon the goods?

A. At the cost in Brodhead, I think.

Q. Did he at the same time he closed up his inventory strike a balance between his indebtedness and his assets?

A. I don't know.

Q. What was his purpose or object in taking an inventory as you understood it?

A. To find the amount of goods on hand.

Q. Was not the object of taking the inventory to ascertain his financial condition?

A. I don't know.

Q. Did not that inventory show when taken the amount of his indebtedness as well as his assets?

A. I don't know.

Q. Didn't you know that Mr. Lakin was largely indebted in and during the year 1869?

A. Yes, sir.

Q. Was not the subject-matter of his indebtedness talked over in 1869?

A. No; there was never very much, if anything, said about it.

Q. How then did you know that he was largely indebted in 1869?

A. I supposed the building of the store was the main cause of it.

Q. You have already stated, have you not, in the course of the examination, that you did not know what the building cost? Now, if that is true, why did you suppose the building of the store was
94 the main cause of his large indebtedness in 1869?

A. I stated that I could not give the exact amount of the cost of the store.

Q. What amount did you suppose the store building had cost?

A. I should think between $8,000.00 and $10,000.00.

Q. How much did Mr. Lakin owe on that building after it was completed?

A. I don't know.

Q. About how much?

A. I have no idea.

Q. Did he owe anything more than the $3,000 you have spoken of as loaned to him by your father?

A. I don't know.

Q. You have stated, have you not, that Mr. Lakin was largely indebted in 1869?

A. Yes, sir.

Q. Now what indebtedness and for what purpose or how was that indebtedness created?

A. I think by building the store and slow collections.

Q. Did not those two things embarrass Mr. Lakin in his business?

A. I don't know.

Q. Is it not the fact that for the last six months of the year 1869 business was unusually dull with Mr. Lakin?

A. I think it was.

Q. Now if business was unusually dull and Mr. Lakin was largely indebted and collections so slow, please state how you think it was possible for Mr. Lakin successfully to carry on his business?

A. By having a good trade at the opening of spring.

Q. Now you knew, did you not, in 1869, that business was dull; that Mr. Lakin was largely indebted, and that collections were slow?

A. Yes, sir.

Q. Was not that frequently talked over with you and Mr. Lakin and the members of your family?

95 A. No, sir.

Q. When did you first hear of the giving of the mortgage to your father?

A. I think as soon as it was given.

Q. Had your father been down to Brodhead at any time between February, 1869, and August, 1869?

A. I don't remember.

Q. Was you in the habit of corresponding with your parents during the year 1869?

A. I corresponded with the family; not particularly with father or mother.

Q. How frequently?

A. Weekly.

Q. Did you hear anything about the giving of a mortgage by Mr. Lakin to your father prior to the execution of the mortgage?

A. No, sir.

Q. Didn't your father and Mr. Lakin have a settlement in February, 1869?

A. I know they had a settlement in the spring, but I don't know when. I think it was early in the spring.

Q. Now in that settlement did they not look over and examine their accounts?

A. I think they did.

Q. That settlement was had then at Brodhead, was it not?

A. I think it was.

Q. Now was there nothing said at that time when they had looked over their accounts and agreed upon the balance or amount due your father about the giving of a mortgage to secure that amount?

A. I don't know.

Q. You was present during the settlement, were you not?

A. I was not.

Q. Where were you at the time that settlement took place?

A. At Mr. Lakin's house, I think.

96 Q. You knew that the settlement had taken place didn't you?

A. Yes, sir. I think I did.

Q. Was your father in business at Woodstock at the time of the settlement?

A. Yes, sir.

Q. What business?

A. Lumber business.

Q. What business was he in at the time the mortgage was given?

A. In the lumber business.

Q. Do you know of any reason why he needed the mortgage any more to carry on the lumber business in the month of August, 1869, than he did in the month of February, 1869?

A. I think about August, 1869, he bought his partner out.

Q. Are you sure about it?

A. As I understood it, that is what he wanted the money for.

Q. Who did you understand it from that he wanted the money for that purpose?

A. I don't know who.

Q. Then you understood, did you, that it was necessary for your father to raise money in order to buy out his partner, and that to raise the money for that purpose he wanted Mr. Lakin to execute a mortgage to him for the amount Lakin was owing him?

A. I understood it was to go into his business, and I think for that purpose.

Q. Now can you not tell from whom you learned that such was the object and purpose of the mortgage?

A. No, sir.

Q. Was Mr. Lakin, in the year 1869, in the habit of visiting your father?

A. Not any more than usual.

Q. Did he frequently visit your father in the fore part of the year 1869?

A. I don't know.

Q. Was you present when the mortgage was executed?

A. No, sir.

97 Q. Did Mr. Lakin keep and preserve the inventories which he took from year to year?

A. I think he did.

Q. Were they kept in a book?

A. Yes, sir.

Q. Do you know of Mr. Lakin's owing the firm of Wager and Fales, of Troy, N. Y.?

A. Yes, sir.

Q. Did you know in 1869 that he owed that firm?

A. Yes, sir.

Q. Did you know of his executing a mortgage to secure that debt?

A. Yes, sir.

Q. Did you, during the four years you were in Mr. Lakin's employ, board with him?

A. Yes, sir.

Q. Is it not the fact that Mr. Lakin was much more embarrassed in his business after the building of the store than before?

A. Yes.

Q. Did you not hear Mr. Lakin frequently complain in the year 1869 of the dul'ness of his trade, and his inability to meet his paper as it was maturing?

A. I heard him speak of the dulness of trade, but nothing about meeting his paper.

Q. You knew that he borrowed, as you have stated, money to meet his paper. Now was not that frequently the case after the building of the new store, and prior to his failure?

A. I don't know.

Q. You stated, in the course of this cross-examination, that Mr. Lakin kept in a separate account with each of his creditors the amount of his indebtedness to them. Was not that amount first entered on the journal or day-book; or, if not on the journal or day-book, on what book was it entered?

A. It went onto the day-book, and from there on to the ledger.

98 Q. Then did you not, in transcribing the entries from the journal or day-book on to the ledger, transcribe those items as well as the other items on the book?

A. Yes, sir.

Q. Then you knew, did you not, the amount of Mr. Lakin's indebtedness; or might have known it by simply running through the ledger?

A. No, sir; I don't think I would have known them all.

Q. Why not?

A. I could have known of his indebtedness to the firms that he bought goods of, but not to persons of whom he borrowed money. I think the borrowed money would go on to the cash book.

Re-direct:

Q. You are now teaching in Madison?

A. Yes, sir.

Q. This book which you speak of as the invoice-book, did that contain the invoice of stock?

A. Yes, sir.

Q. Taken how often?

A. Once a year.

Q. Did it contain anything else?

A. I think that the amounts due him on the books were also put in.

Q. Did it contain anything else?
A. I think not.
Q. Could you have ascertained, without going through a large number of names and accounts, the amount of his indebtedness at any one time?
A. No, sir.
Q. When you speak of an inventory being taken, of what do you mean?
A. Of goods on hand.
Q. Did the inventories contain anything else?
A. The amounts outstanding on the books.
Q. Anything else?
A. No.

LOUISE HAYNER.

99 At 12 m. adjourned till 2 p. m.
At 2 p. m. parties appeared.

A. P. Hayner.

ANDREW P. HAYNER,, being first duly sworn, says for defendants:
Q. You are one of the defendants, are you?
A. I am.
Q. What is your age?
A. 56 years.
Q. Mr. Lakin married one of your daughters?
A. Yes, sir.
Q. How long ago?
A. About 12 years.
Q. Where do you reside?
A. In Woodstock, Ill.
Q. How long have you resided there?
A. It will be two years in May since I took my family there, and I was there from the February prior.
Q. Then you moved to Woodstock in May, 1869?
A. Yes, sir.
Q. Where did you reside prior to May, 1869?
A. Brodhead.
Q. How long did you live there?
A. About a year.
Q. Then you went to Brodhead in the spring of 1868?
A. Yes.
Q. Where did you reside prior to that?
A. In Milton, Rock Co., Wis.
Q. What business was Mr. Lakin in when you first became acquainted with him, and where?
A. I became acquainted with him in the store of Williston and Lakin, here in Janesville.
Q. How long was that prior to his commencing business in Brodhead?
A. I couldn't tell, sir.
Q. Did Mr. Lakin at any time apply to you for a loan of money to build a store with?
100 A. Yes, sir.
Q. When was it?

A. I think it was in the early part of 1868.
Q. Where did you reside at that time?
A. I lived at Milton.
Q. Did you agree to let him have any at that time?
A. I think I didn't at the first interview we had.
Q. Did you have another interview?
A. Yes, sir.
Q. Where was that?
A. At the same place.
Q. When?
A. Along the latter part of March or fore part of April, 1868.
Q. State what occurred then, Mr. Hayner.
A. He wished me to furnish $3,000, and requested me to come out to Brodhead and superintend the building of a store for him. He there told me that if I would lend him $3,000 when the store was done he would give me a mortgage on the store, and notes accompanying. He was to get the store insured, and assign the policy over to me. He was to give me ten per cent. from the time the work was commenced on the store. The time was not then specified which he was to have the money. If my recollection serves me, about April 12th I deposited $3,000 in the First National Bank of Janesville, subject to my order. The first of May I moved my family to Brodhead. After we got settled we commenced operations at the store. I moved there the first week of May.
Q. Did you take charge of the building of the store?
A. Yes, sir.
Q. Was there any understanding in the spring of 1868 about his paying the money back soon?
A. No, sir.
Q. What was the understandiug about payment?
A. He was to have time.
A. What became of this money that you deposited to your
101 order?
A. It was drawn out and used in the building.
13 checks on First National Bank shown witness, as follows, to wit:

1.	April 23, 1868	$1,000 00
2.	May 4, 1868	400 00
3.	May 15, 1868	300 00
4.	May 26, 1868	400 00
5.	June 2, 1868	400 00
6.	July 1, 1868	200 00
7.	July 3, 1868	156 88
8.	July 16, 1868	140 00
9.	July 31, 1868	130 00
10.	Aug. 3, 1868	17 50
11.	Aug. 4, 1868	64 42
12.	Aug. 5, 1868	119 16
13.	Aug. 12, 1868	55 00
		$3,382 96

All the above-described checks are drawn on the First National Bank, Janesville, Wisconsin. The first five are signed by A. P. Hayner, and the eight following by A. P. Hayner, "per Lakin."
Q. Were these checks used in the building and used for the benefit of Lakin, and at the time they bear date, respectively?

A. Yes, sir.

(Counsel for plaintiff here waives the production of said checks on the trial of these actions, and consents that they be not annexed to this deposition.)

Q. How long did you work there on the store?

A. I worked there, with very little exception, from May, 1868, till the next February.

Q. Do you know how much your work came to?

A. I can't tell exactly. It was something over $400.00.

102 Q. Did you look over in February, 1869, you and Lakin, to see what the balance was between you?

A. Yes.

Q. What was that balance?

A. $3,303.23.

Q. Then, between February, 1869, and August 28, 1869, did you have same account with Mr. Lakin?

A. Yes, sir.

Q. Is a copy of the account annexed to your answer in this case?

A. It is.

Q. Does that account, annexed to your answer, show the true amount that was due you at the giving of the mortgage in question?

A. Yes, sir.

Q. What is that amount?

A. $3,276.87. That is the true balance of the account between us after deducting all payments that he had made.

Q. That account that he sent you about the time of giving this mortgage, in August, 1869, included and covered the mutual deal between you since you looked over, in February, and showed the true balance due you, did it?

A. It did.

Q. How large was that store?

A. It was 22½ by 80 feet, outside.

Q. Do you know what it cost?

A. No, sir.

Q. Do you know about what it cost?

A. Not of my own knowledge.

Q. What is your judgment upon it?

A. I think it cost $7,000 or $8,000. I purchased material, hired help, and when the material was delivered I would give a check to Lakin for the amount and he would cash it.

Q. What do you mean by giving a check?

103 A. I would give a card, with the man's name and the amount, and Lakin would pay him.

Q. From what you know of the affairs of Mr. Lakin, what, if anything, did you consider him worth over and above his debts at the time of commencing that building?

A. I couldn't come to any conclusion certain. I always thought at that time he had from eight to nine thousand dollars over and above his debts.

Q. Do you know what his purpose was in building the store?

A. To occupy as much of it as he wanted for his own use and the balance to rent.

Q. Occupy it for what, and for what length of time?

A. For a hardware store. For always, I thought.

Q. Was there any other object in building the store?

A. He was holding a stock of goods in a wooden building, and it was

somewhat hazardous. The insurance was high, and for the reason of its not being safe he wanted to get into a quarter where he would feel more secure.

Q. Was he doing business during the time he was building that store?

A. Yes.

Q. Large or small?

A. A usual business.

Q. When did he complete the new store?

A. He didn't get it entirely completed till along the last of January, 1869.

Q. How soon did he move into it?

A. I think he must have moved into it in November, 1868.

Q. Soon after the completion of the store you went to Woodstock, did you?

A. Yes.

Q. Did you spend most of your time there?

A Yes, sir.

Q. While you were there in Brodhead were you acquainted with
104 Mr. Lakin's general reputation for pecuniary responsibility and solvency?

A. Yes, sir.

Q. What was that reputation; good or bad?

A. I think it was good.

Q. Were you during the same time acquainted with Mr. Lakin's general reputation there in Brodhead for honesty and integrity as a business man?

A. Yes, sir.

Q. Was that reputation good or bad?

A. Good.

Q. Did you, at any time while there at Brodhead, see anything, or hear anything, or know of any fact from which you were induced to believe or infer that he would be unable to pay all his debts?

A. I did not.

Q. State what was next said about giving this mortgage between you and Lakin, after it was spoken of in the spring of 1868, as you have testified.

A. At the time of looking over our account in February, I think there was something said that we would fix up the matter in the spring.

Q. Fix up what matter in the spring?

A. Giving this mortgage. As my family were going to remain in Brodhead, it might be necessary to have our accounts continued. The family might want to get articles from the store.

Q. Anything else?

A. That before I moved we would look over the account again, and I would take the mortgage. When I moved I was in something of a hurry to get away, and I didn't get time. It ran along till in the summer. Sometime in July, I should think, Mr. Lakin's folks came down to visit us; Mr. Lakin and his wife and little girl. While he was there I told him I wanted he should look over our accounts, strike a balance, and whatever the balance was give me a mortgage for.

Q. Was anything said as to when that mortgage should be payable?

105 A. I told him to fix his own times. I directed him that I wanted it in three installments, and he had the papers made out and sent them to me by mail soon after.

Q. Was there any particular reason why you wanted the mortgage then?

A. Yes, sir.

Q. What was it?

A. I wanted the mortgage and notes to use in my business as collateral, or to get them discounted.

Q. Did Lakin execute and send you the notes and mortgage, as he and you agreed?

A. Yes, sir.

Q. Was that accompanied with any statement of account between you?

A. Yes, sir; there was a statement accompanied the notes and mortgage, and a copy of the account or statement is annexed to my answer in my cause.

Q. Up to the time of receiving those notes and mortgage from Mr. Lakin, did you ever know any fact or see or hear anything from which you might be led to believe or infer that Mr. Lakin would be unable to pay all his debts and liabilities?

A. I know of no reason why; I did not.

Q. Did you, up to that time of receiving those notes and mortgage, having any fear or anxiety as to your getting your debt or as to Lakin's responsibility?

A. No, sir.

Q. How much did you consider Lakin worth over and above his liabilities at and prior to the time of the giving of this mortgage?

A. As I said before, some nine or ten thousand dollars.

Q. What, if any, representations did Lakin make to you in regard to his condition financially at or prior to the making of these notes and the mortgage?

A. I think I have heard him say that he thought he would have $10,000.00 or $12,000.00 left above his indebtedness.

106 Q. When did you first learn his true condition? State all the circumstances.

A. Christmas of 1869. It was customary for the family to be all at home on Christmas. Mr. Hurd, Mrs. Lakin, and all the family were there—that is, at Woodstock, Ills. Mr. Norman Hall, of Brodhead, came to Woodstock while the family were all together, between Christmas and New Years, and said that he had got a letter from a friend of his, a brother-in-law, I think, at Chicago, stating that Lakin had made an assignment. Mr. Lakin about the same time received a letter at Woodstock from John Taylor, stating that he (Taylor) wished him (Lakin) to come right on, as there were some men from Milwaukee there who wanted to see him. Mr. Lakin returned to Brodhead on the first train. I heard nothing more of the matter until about a week. Deacon Hurlburt, from Brodhead, came down to see me, and told me that Lakin wished him to tell me that his situation was worse than he expected to find it. Saw no more of it until I saw the printed circular of Lakin to his creditors.

Q. Did you come up with Lakin from Woodstock to Janesville?

A. Yes, sir.

Q. Did Lakin make any statement then as to the amount of his indebtedness in reply to a question from me to Mr. Lakin as to how much he owed?

A. I cannot remember.

Q. Do you not remember at my house that Mr. Lakin stated that reports had been circulated about him? that I asked him about his indebtedness, and we talked over about getting extensions and fixing up?

A. Yes, but not the amount.

Q. Do you remember that he went away that night with the intention of getting his friends to endorse for him, and to get extensions, and to pay up his small debts, and to go right along with his business?

107 A. Yes, sir; I remember his purpose was to do so.

Q. Wasn't that the reason he sent by Mr. Hurlburt that he had found his matters worse than he expected, and could not, therefore, go on as he expected?

A. It is probable.

Q. Up to this time that this news came down to Woodstock do you have any doubt that Mr. Lakin would continue to do a successful business there in Brodhead?

A. I never had a doubt of his responsibility to pay until Mr. Hurlburt came down with the printed circular.

Cross-examination:

Q. What was your occupation when you resided at Milton?

A. I was a farmer.

Q. How long had you resided in Milton?

A. About three years and one-half.

Q. Did you deposit the entire $3,000 at one time in the First National Bank?

A. Yes, sir.

Q. Was that your own money, the whole of it?

A. Yes, sir.

Q. Had Lakin commenced to build his store before you deposited that money?

A. No, sir.

Q. Did you limit Mr. Lakin in the amount for which he should sign your name to checks?

A. Yes, sir; to the amount of $3,000.

Q. Did you deposit in the First National Bank any other money at any other time?

A. Yes, sir.

Q. When, or about when did Mr. Lakin first talk with you about building a store at Brodhead?

A. Early in the spring of 1868.

Q. What amount did he, in talking with you, think that the store would cost him?

A. My recollection is that he didn't say.

108 Q. Was he at that time the owner of a homestead in Brodhead?

A. He was.

Q. Was it paid for?

A. I don't know.

Q. What property did he own to your knowledge in Brodhead?

A. He owned some lots where he built his store. He owned two lots enclosed in another place a little north of the store. He had some other lots in other parts of the town. I couldn't give you a description of them.

Q. Did he, to your knowledge, own any other real estate than that that you have just described?

A. No; only what I have before mentioned.

Q. What was the value—I mean the fair cash market value of the real estate which Mr. Lakin owned in the spring of 1869?

A. I could hardly give you an estimate.

Q. State as nearly as you can its value.

A. I couldn't state it. I don't think I could get anywhere near it.

Q. Did Mr. Lakin place any valuation upon his real estate in the early part of 1868?

A. I think he did.

Q. What estimate did he place upon his real estate in the early part of 1868?

A. I didn't hear him say.

Q. Was his real estate, or any portion of it, encumbered in 1868?

A. I couldn't tell.

Q. You stated that you was a farmer at Milton. How much of a farm did you own?

A. My farm in Milton contained 119 acres.

Q. What was its value?

A. I sold it for $6,000.

Q. Was the $3,000 that you deposited in the bank a portion of the proceeds of the sale of your farm?

A. It was.

109 Q. Did the remainder, to wit, the $3,000 of the amount realized on the sale of the farm, remain on bond and mortgage; and, if so, at what rate of interest?

A. It did; at 10 per cent.

Q. After the sale of the farm did you remove to Brodhead?

A. Yes.

Q. How soon after you had removed to Brodhead before Mr. Lakin commenced the building of the store?

A. He commenced the store, I think, about the middle of May.

Q. Where did Mr. Lakin get his money from, aside from the $3,000 which you loaned him to build that store?

A. I can't tell.

Q. Did he owe anything for that building after it was completed; and, if so, how much?

A. All that I know of his owing for it was the $3,000 that I put in.

Q. You superintended, did you not, the erection of the building?

A. I did.

Q. Did you superintend the building till its final completion?

A. Very nearly.

Q. Who purchased the materials for the building?

A. Mr. Lakin and I purchased the brick and the most of the lumber.

Q. Who paid for the work and the materials; and how was it paid?

A. $3,000 of that money was checked out, as you see by the checks. The rest was paid by Mr. Lakin on my certificate or order when materials were furnished or work done, from time to time, as the work progressed.

Q. Mr. Lakin paid no bills except on your certificate or order, did he?

110 A. I think he did; some. He paid certain workmen that I told him to pay.

Q. Was the store built by contract; or how?

A. The brick-work and stone was done by contract; the balance was done some by day, and some certain pieces of work were done by contract.

Q. What was the total cost of the store-building?

A. I couldn't tell you.

Q. Why are you not able to tell its cost?

A. I didn't keep a record of the expenditures.

Q. Did Mr. Lakin, to your knowledge, have any means with which

to build that store, aside from that taken out of his mercantile business?

A. I can't tell.

Q. Don't you know, Mr. Hayner, that he had no money to build that store outside of that which he received from his mercantile business and what he got of you?

A. I don't know what his means consisted of.

Q. Did he, to your knowledge, raise any money to go into that building by the sale of real estate or by mortgage of his real estate?

A. He sold a lot to Mr. Bowen; I don't know whether he got the money for it or not.

Q. For how much?

A. I don't remember the price.

Q. Did you live in Mr. Lakin's family during the year 1868?

A. No, sir.

Q. You kept house?

A. Yes, sir.

Q. What knowledge had you of Mr. Lakin's financial condition in the early part of the year 1868?

A. I had no knowledge other than his business—his stock of goods.

Q. What knowledge had you of that?

A. That part of it I could see.

Q. Had he, in spring and summer of 1868, a large stock of goods?

111 A. A usual assortment of goods—a good stock.

Q. What amount of goods do you think he had in the spring and summer of 1868?

A. I couldn't get at it in any other way than from what I heard him say about invoices.

Q. What amount did you hear Mr. Lakin say in the spring and summer of 1868 he had?

A. I think I understood his stock to be about $9,000.

Q. Did he state to you at that time or at any time, how much he owed on that stock?

A. No.

Q. Do you know whether Mr. Lakin bought any goods in 1868 on credit?

A. He was receiving goods all the while. I don't know when he paid for them.

Q. Don't you know that he bought principally on credit?

A. I suppose he bought some on credit. I don't know it, but I suppose he did.

Q. Did you make any inquiries of Mr. Lakin in the fore part of the year 1868, as to his pecuniary responsibility?

A. No.

Q. What did you suppose Mr. Lakin to be worth in the spring and summer of 1868?

A. From $9,000.00 to $10,000.00.

Q. On what did you base that supposition?

A. Stock on hand, accounts and real estate.

Q. Did he give you a statement of the amount of his stock on hand?

A. I don't know whether he did or not.

Q. Did he give you a statement of his accounts?

A. I got them. I don't know whether I got them from him or some other member of the house.

Q. And did he give you an estimate of the value of his real estate?

A. He did not.

Q. Did he include in any statement which he gave you the amount of his indebtedness?

A. No.

112 Q. Was there at this time any great demand in Brodhead for real estate?

A. There was some trading in real estate.

Q. Much or little?

A. There were several changes made during that summer.

Q. Was there any agreement between you and Mr. Lakin as to the rate of compensation you were to receive for superintending the erection of the building?

A. No, sir.

Q. You arrived at that after the work was completed, did you?

A. Yes, sir; at the time of our settlement.

Q. And in that settlement how much did he allow you for your services?

A. $2.50 per day. He was owing me something over $400 on that account.

Q. Was you engaged in any other business during that time than the superintending of the erection of the building?

A. In June of that summer I became interested in a lumber-yard at Woodstock.

Q. Did you purchase an interest in a lumber-yard at Woodstock?

A. I furnished money, and the man who was with me furnished lumber. He owned a mill north Mr. Clinton.

Q. Did you from that time on give your attention to the lumber-business?

B. Not myself.

Q. At what time was the new store completed?

A. My recollection is that it was not entirely completed till along in January, 1869.

Q. Did Mr. Lakin occupy it before that time?

A. Yes, sir.

Q. Did Mr. Lakin sell out any considerable portion of his stock before going into the new store?

A. He did.

113 Q. Did he sell out entirely the stove department of his business before going into the new store?

A. The stove and tin business.

Q. Who did he sell that to?

A. Mr. George Spaulding and Thomas Brown.

Q. What was the amount of that sale?

A. I don't remember.

Q. What amount, or about what amount, of goods did Mr. Lakin start in business with in the new store?

A. I think it was told me that it was $9,000.00.

Q. Who told you that?

A. I can't tell you whether Mr. Taylor told me, or Mr. Lakin. I think it was one or the other.

Q. What led them to tell you that that was the amount of stock he had on hand at that time?

A. I always had a desire to know what the stock invoiced when the invoice was taken.

At 6 p. m. adjourned till 9 a. m. to-morrow, March 3rd. At 9 a. m., Friday, March 3rd, 1871, parties appeared.

The cross-examination of A. P. Hayner being continued, he testifies as follows:

Q. When was the invoice taken to which you refer in your last answer?

A. It was the last invoice that I recollect of his taking.

Q. When was it taken?

A. I don't remember the date.

Q. Was it prior to January, 1869?

A. I think it was.

Q. What was your object that time in inquiring as to the amount of the invoice?

A. No particular object; only to ascertain the amount.

Q. Was'nt you interested to know, as a creditor of Lakin?

Q. I had an interest then, but did not make an inquiry then in consequence of that.

Q. At this time Mr. Lakin was owing you over $3,000, was he not?

114 A. I think so.

Q. And he had just completed, had he not, an expensive store?

A. He had completed the new store.

Q. Now, did the completion of that new store, to some extent, embarrass him in his business as a merchant?

A. Perhaps.

Q. Don't you know that it did?

A. No, sir.

Q. What makes you say "perhaps it did?"

A. I mean this: It might have embarrassed him, and I know nothing about it.

Q. Wasn't it that fact, that it might have embarrassed him, and you know nothing about it that made you so particular in inquiring into his assets?

A. I was no more particular in inquiring into his invoices since that than I had been on previous occasions.

Q. You are certain of that?

A. I feel so.

Q. You are certain, then, that it was not from the fact that Mr. Lakin was a large debtor of yours, that you made inquiry at that time as to the amount of his assets?

A. It was not on account of his being indebted to me, nor on account of his general indebtedness.

Q. You made the enquiry, then, simply and only because it had always been your custom to do so?

A. I always made that inquiry for my own satisfaction.

Q. If the inquiry was made simply for your own satisfaction, why did you confine it to his assets and leave out entirely his liabilities?

A. I always thought in my mind that the business that he did, and cash and assets, and stock on hand, would take care of the indebtedness.

Q. How did you know that, or think it, unless you also knew the amount of his indebtedness?

115 A. I supposed that; I don't know it, and yet I may think it.

Q. Is it just as necessary to know the amount of indebtedness as it is to know the amount of the assets in order to correctly determine the pecuniary condition of the parties?

A. Yes, sir.

Q. Then could you form any opinion of the pecuniary standing or ability of Mr. Lakin until you knew his indebtedness?

A. I did form an opinion that satisfied me at the time.

A. State now what was the basis of that opinion.

A. I was familiarly acquainted with Lakin and his business from the time he first went to Brodhead, and I judged from what I saw when visiting him.

Q. And yet during all this time you claim and insist, do you, that you did not know the amount of his indebtedness?

A. I never knew his indebtedness till I saw it on the circular.

Q. Had he paid you even the interest on your $3,000.00?

A. This money I loaned him became a record of book account, debit & credit, and when we settled the interest was added in. I considered it the same as paid when it was added in.

Q. Did you ever ask Mr. Lakin for a statement of the amount of his indebtedness?

A. No, sir.

Q. What steps, if any, did you take to ascertain the amount of Lakin's indebtedness in the year 1869?

A. I took it from the result of settlement up to Feb.

Q. You don't understand my question. (Question repeated.)

A. I took no steps.

Q. When did you leave to go to Woodstock to reside; to reside in Woodstock; to reside there?

116 A. I took my family there about May 1, '69; that was after I made my settlement with Lakin in Feb'y '69.

Q. Did you have any conversation with any person in Brodhead prior to leaving Brodhead, in regard to looking after your interest there in Brodhead?

A. Yes, sir.

Q. Who?

A. Christopher Seeber.

Q. State what you said to Christopher Seeber on that subject?

A. I had a few little matters, little bills due me, and I gave them to Mr. Seeber to get them for me—look after them for me.

Q. Did you, at the same time, or at any time request Mr. Seeber, or any other person in Brodhead, to look after your interest with Mr. Lakin?

A. No, sir.

Q. Did you take any steps of any kind to look after your interest with Mr. Lakin till Aug., 1869?

A. None other than what I took with Mr. Lakin himself when he was at Woodstock.

Q. About when was that?

A. Think it last of July, 1869; think few weeks before making the mortgage.

Q. Before leaving Brodhead to reside in Woodstock, had you been informed, or did you know, that Mr. Lakin had used moneys which came into his hands as treasurer of the district, for his own purposes?

A. I don't know anything about it, sir.

Q. Had you heared of it?

A. Think Mr. Lakin stated the circumstances to me once.

Q. Was that before you went to Woodstock?

117 A. I think that was in 1868, before I went to Woodstock.

Q. Can you now tell any good reason why you did not take se-

curity for the amount of your indebtedness from Lakin at the time you and he agreed upon the amount due to you from him?

A. I had the utmost confidence in Lakin, and I supposed he was going to do just what he said he was going to do, He always had done that up to that time—had never failed.

Q, What first led you to ask him to give you the mortgage?

A. I wanted funds to put in my business, and supposed I could get them out of that mortgage and notes as collateral, or get them discounted.

Q. Did you represent to Mr. Lakin that such was the purpose for which you wanted the mortgage?

A. I did.

Q. In what particular way did you represent to Mr. Lakin, that you could use the money just at that time, in your business?

A. I think I used this language: that I thought I wanted the mortgage; I thought I could use it in my business.

Q. Use it what way; in buying lumber, or how?

A. I could raise money and give those notes as collateral security, was one reason. If I could get the papers discounted, I could use the money that way. After I got the mortgage I had an offer to exchange lumber for the mortgage, at cost price; my objection was, I could not receive lumber for the whole amount; I wanted part money to pay freights.

Q. Have you got the notes and mortgage?

A. They are at home; I own them. I did use one of the notes as collateral security; can't say when; and that note is still out as collateral, but I own it.

What was the amount of that note, and when did you use it as collateral?

118 A. The first note one thousand dollars, and I used it at the First National Bank at Janesville.

At 12 m. adjourned till 2 p. m.

At 2 p. m. parties appeared, the cross-examination of Andrew B. Hayner being continued, he testified as follows:

Q. State, as near as you can, the time you used that first note as collateral security in the First National Bank.

A. About 9 months since.

Q. Did you expect to use the notes of Mr. Lakin for the purpose you have stated, right along at the time that you obtained them?

A. Yes, sir.

Q. Did you not at that time consider that his notes were good without security?

A. Yes, sir; I supposed they were.

Q. Then why did you take a mortgage?

A. Mr. Lakin's note, where I was doing business, without the mortgage, might not be effective; Mr Lakin being a stranger there.

Q. Would not the note of Mr. Lakin, put up simply as collateral to your note, have been good there?

A. I should have considered him good.

Q. If that was so, then was there any reason for your taking the mortgage, and if so, what reason?

A. I would rather have the notes accompanied by a mortgage than any man's note at the time those notes were drawn.

Q. If that was so, then would not the same reason been equally as cogent for taking a mortgage at the time of the settlement in 1869?

Yes, sir; that's the time I ought to have taken it.

119 Q. Was it at your request that Mr. Lakin gave you the mortgage in August, 1869?

A. It was a matter of an agreement that I should have it at any time.

Q. Did Mr. Lakin want you to let his debt remain unsecured for any reason?

A. No, sir.

Q. Was not the question discussed between you and Mr. Lakin at any time as to the effect upon his credit or business of executing a $3,000 mortgage and having the same go upon record?

A. We never did.

Q. Don't you think that if immediately after his new store was completed a $3,000 mortgage had been executed and placed on record, that it would have impaired, to some extent, his credit?

A. I can't tell.

Q. Is it not the fact that business with Mr. Lakin was no better after he went into the new store than it was before?

A. I think he told me his business was a little better there than it was in the old store.

Q. Was not trade dull in the year 1869?

A. In the early part of 1869, business was fair.

Q. Down to what time in 1869?

A. I think it was fair till after the middle of the year.

Q. Did it then commence to be very dull?

A. I didn't know anything about Mr. Lakin's business after I went away from there; I was speaking of general business.

Q. Did Mr. Lakin come down to Woodstock to see you about business?

A. No. sir; I never knew him to come except to visit.

Q. How long did he remain with you in Woodstock, when he was there in the latter part of July, 1869?

A. I think a day or two.

120 Q. Did he say anything about his business at that time?

A. Nothing special.

Q. Did you ask him anything about his business at that time?

A. I don't remember that I did.

Q. You made no inquiry then of him at that time?

A. I don't remember of any language that was unusual upon a visit; there was no business matter talked over then of a special nature.

Q. And yet it was then and there, as I understand you, that you asked Mr. Lakin to give you the mortgage; am I correct in this?

A. Yes.

Q. State now what commenced the conversation in which you asked him to have the mortgage executed, and state what was said, and all that was said at that time about the execution of the mortgage.

A. When Mr. Lakin's folks started to leave I went with them to the depot. On the way to the depot I said this to Mr. Lakin: that I wanted him to look over the account, strike the balance, and get a mortgage & notes drawn up, execute them, and send them to me by mail; I further told Mr. Lakin, I think, that I thought that I could use them to my advantage in my business.

Q. Anything more?

A. Mr. Lakin told me he would do so, and in due time I received the mortgage and notes, just as he agreed he would send them to me.

Q. Was that all that passed between you and Mr. Lakin at that time in relation to the mortgage?

121 A. There was very little said. It wasn't necessary to say much. The thing was understood before—the whole arrangement.

Q. Had you at that time any idea of purchasing lumber because freights were low?

A. I was ordering lumber more or less all the time; I was not thinking of purchasing any more than I had been right along. I needed some funds in my business.

Q. Now, how long prior to the execution of this mortgage had you needed funds in your business?

A. I needed money all along. I was not pressed for money particularly. I had bought out Mr. Clinton, my partner, and about the time I wanted the mortgage I wanted some of it to pay upon that purchase; or, in other words, if it came to that, I wanted something to fall back on.

Q. Wouldn't the money have been better for your purposes at that time than the notes & mortgage of Mr. Lakin?

A. Money is the best substitute for business there is.

Q. Then, why didn't you ask Mr. Lakin for the money, or some portion of it, which had been due and owing to you since Feb'y, 1869?

A. When I let the money to Mr. Lakin I agreed to wait on him & take a mortgage and notes; I felt like performing my part of the contract, too.

Q. You wanted to raise money; didn't you?

A. I didn't want to raise money when I loaned Lakin the money. I did want to raise money in the summer of 1869.

Q. Didn't you believe at that time that Lakin could have raised you the $3,000 without any trouble?

A. It might not have been easy for him to do it.

Q. (Question repeated.)

122 A. I believed Lakin was responsible for all that he was owing.

Q. (Repeated question.)

A. I believe that he could have raised it, but it might not have been convenient.

Q. Why do you think it would not have been convenient for him to have raised $3,000 for you?

A. I am inclined to think it would inconvenient for any business man to have raised $3,000 on short notice. It would have been the same with him.

Q. Would not $1,500 in cash have been much better for you at that time than to have procured the discount of the $3,000 mortgage running for a period of one, two, and three years.

A. I think I would take my chances on the mortgage in preference to the $1,500.

Q. Did you ask Mr. Lakin for any money?

A. No, sir; not any part of that $3,000.

Q. Then it was more from a desire on your part to fulfil a contract with Mr. Lakin that you took the notes & mortgage, as you did, instead of asking for the money or some portion of it?

A. When I enter into a contract with a man for any amount I always like to live up to that contract.

Q. As you understand it, then, the giving of the mortgage by Mr. Lakin to you at the time he gave it was really to carry out your contract with him and not because you needed or wanted the money? Is that so?

A. When I loaned Mr. Lakin that money I had other means which was not in use, and I promised to give him time, and the transaction of that contract was lived up to right to the letter all through.

123 Q. You left the time when, and the amount of each installment to be paid, entirely to Mr. Lakin, did you not?

A. Yes, sir; thinking at the time it might be an advantage to him to have time, & that I could use the papers to my satisfaction.

Q. Was you not somewhat astonished at the time the notes had to run when you received them?

A. No, sir. My experience in that matter is this, that mortgages of that kind, running a number of years, are picked up by moneyed men rather than those at shorter time.

Q. At what rate of discount did you expect that you would realize the money on those notes and that mortgage?

A. I didn't expect very much discount on that paper.

Q. Did you expect to use the paper more as collateral security than by sale and transfer of the notes and mortgage?

A. I meant to use them the best I could; I was not decided which way.

Q. You did not expect, did you, that any person would buy those notes & mortgages at their full face?

A. I did expect that I could trade those papers for their full face for lumber; in fact, I had that offer.

Q. Is it not the fact, to your knowledge, Mr. Hayner, that those notes and that mortgage were taken at the time simply & only as security for your debt?

A. It is not the fact.

Q. Now, if the notes & mortgage were not taken simply and only for the security of your debt, then please state why you did not

124 make some effort to have Mr. Lakin pay some portion of that debt in money?

A. Because that would have been a transaction outside of the contract. I wish it to be understood that I gave Lakin time, and it was to be put into notes & mortgage. That was the agreement when the loan was made.

Q. You was not present when the notes and mortgage were drawn up?

A. No, sir.

Q. You left that matter entirely with Mr. Lakin, did you?

A. Yes, sir.

Q. Was there any understanding or agreement between you and Mr. Lakin that whatever interest you were obliged to pay in order to raise money for the purpose of your business, over and above that called for by the notes & mortgage, Mr. Lakin was to re-imburse you for?

A. There was no such contract. The interest was specified as being 10 per cent. per annum.

Q. Was it or not true, Mr. Hayner, that the building of the store in Brodhead by Mr. Lakin did, to some extent, at least, cripple or embarrass him?

A. Money that he put into the store out of his business perhaps had that effect.

Q. Was not all the money that he put into that store taken out his business except the $3,000 which you let him have?

A. Yes, I should think it was.

Q. Did you know of Mr. Lakin borrowing any money, aside from that he borrowed of you, either in the year 1868 or 1869?

A. I could not tell of my own knowledge.

Q. Did you hear from any source that he was borrowing money,

125 aside from that he was borrowing from you in 1868 or 1869?

A. I know of a thousand dollars that he borrowed from Mrs. Balis, but I don't know when.

Q. Do you know on what time he borrowed it?

A. I do not.

Re-direct:

Q. Did you endorse this $1,000 to Mrs. Balis for Mr. Lakin?

A. Yes. I am on that paper yet and liable for that money.

Q. Are you on any other notes for Mr. Lakin?

A. Yes; to Mrs. Karts for $500, and another one to the 1st National Bank for $500; one of these I have partly paid.

Q. In regard to the checks introduced here to the First National Bank for a little over $3,300, do you know how Mr. Lakin came to overdraw the $3,000?

A. Mr. Doe, the cashier, was written to by Mr. Lakin to ascertain what amount of the $3,000 remained in the bank at a certain time. Mr. Doe sent a statement of the amount yet in the bank the day he received the letter. I think he reported $300 or $400; I am not certain the amount. We drew the amount. A few days after we got a letter from Mr. Doe stating that we had overdrawn. The reason was that there *was* some checks drawn that had not then got into the bank. Mr. Lakin settled the surplus with the bank, so he only had of those checks $3,000.

Q. You spoke of giving checks or certificates to Lakin for the amounts due for materials or labor, and Lakin paying the amount. Did you do that in any case where Lakin knew what the amount was without any checks or certificates?

A. No, sir.

126 Q. You said that when you settled you arrived at the amount you were to receive for your labor, and Lakin was to allow you $2.50 per day, & came to over $400; when was that?

A. In February, 1869.

Q. Do you believe the account between you and Lakin, as entered in Mr. Lakin's ledger, is correct?

A. I do.

Q. You have examined it?

(By consent of counsel for plaintiff copy of said account is here offered in evidence, and marked Exhibit A 2.)

Re-cross:

Was you endorser on each of the three notes specified in your re-direct examination?

A. Yes, sir.

Q. Were those notes endorsed by you before or after the giving of the mortgage *of the mortgage* in August, 1869?

A. Before.

Q. Had those notes or either of them matured at the time of the giving of the mortgage by you?

A. I can't tell you whether they were or not.

Q. Did you hold any security of any kind, or in any form, to indemnify or save you harmless as endorser on those notes?

A. Not any.

Q. Do you know of Mr. Lakin procuring any other parties to endorse paper for him other than yourself?

A. Yes; previous to the building of the store.

Q. Any after the building of the store?

ANDREW P. HAYNER.

127 EXHIBIT A 2.

A. P. Hayner in account with Leonard Lakin, Dr.

1868.			
Apr.	28.	To paid Mr. Laren for wood	$48 00
May	7.	" " No 4 chrome	5 00
"	11.	" one bench-screw	1 15
"	18.	" cash	10 00
"	22.	" 1 churn	8 50
"	28.	" cash	25 00
"	"	" paid freight on lounge	34
"	30	" express on fish	25
June	22.	" sod, iron, and rope	1 07
"	27.	" cash, made change	1 00
"	29.	" door trimmings	1 75
"	"	" cash	50 00
July	6.	" " for salaratus	15
"	10.	" fruit-covers	25
"	11.	" cash for lamp-burners	50
"	14.	" 4 lbs. 7 oz. butter, 18	80
"	20.	" cash	5 00
"	28.	" 52 lb. sugar, 18	9 36
Aug.	10.	" cash	45 00
"	11.	" 3½ lb. butter, 20	60
"	"	" ½ gal. oil	30
"	"	" 1 chimn'y & 2 wicks	20
"	20.	" cash for blackberries	90
"	22.	" cash	2 00
"	26.	" 6 glass jars	1 20
"	29.	" 1 small h. saw	1 20
"	"	" ½ gal. oil	30
Sept.	9.	" cash paid for peaches	62
"	17.	" cash	10 00
"	"	" 3 files, 40 x 15	70
"	21.	" 2 " 20, & cash 15	55
"	29.	" cash	10 00
Oct.	2.	" discount on note	6 36
"	3.	" 1 gal. oil	50

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Oct.	3.	To cash	$5 00
"	5.	" 3-f't rule	1 10
"	"	" 1 pocket-knife	1 20
"	21.	" cash for potatoes	10 75
"	22.	" " " " McNail	10 75
"	"	" auger & handle	68
"	"	" cash	8 60
Nov.	2.	" 1 hammer	1 00
"	3.	" cash	5 00
"	"	" p'd S. & B. Stone, &c	56 10
"	5.	" paid McLaren by Ese	43 75
"	6.	" c'r Malloy township	70
"	9.	" cash	4 00
"	14.	" cash	5 00
"	17.	" express on turkeys	1 00

"	18.	" cash	5 00
"	20.	" 1 doz. eggs	20
"	23.	" cash	5 00
"	27.	" 1 gal. oil	50
"	28.	" cash	20 00
Dec.	2.	" 1 No. 1 steel square	2 00
"	3.	" cash for oats	13 72
"	7.	" "	10 00
"	15.	" 119 lbs. beef, 7	8 33
"	"	" 1,440 lbs. hay, 8.00 per ton	5 66
"	17.	" 1 buck saw	1 25
"	"	" 1 cop. B. wash-dish	50
"	"	" p'd Dr. Brett	7 25
"	21.	" 1 pa. stove-polish	10
"	22.	" 1 gal. oil	40
"	"	" 1 lamp chimn'y	10
"	28.	" cash for 13¼ bu. corn	5 33
"	"	" 1 stove-handle	10
1869.			
Jan.	4.	1 p'r chest-handles	45
"	7.	1 broom	25
"	"	1 gal oil	40

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1869.			
Jan.	11.	To cash for groceries	$3 15
"	"	" p'd express on money	35
"	18.	" McLaren's tax	36 47
"	25.	" p'd for liniment	50
"	26.	" cash by John	37
"	"	" for groceries	1 50
"	27.	" p'd Rosenoyuns	2 00
Feb'y	2.	" paid for rugg for Wilson	10 00
"	"	" washerwoman	50
"	"	" 7 lbs. maple sugar, 18 c	1 26
"	"	" cash for mother	25
"	8.	" cash for hay	5 00
"	"	" " " John	1 25
"	12.	" 1½ doz. eggs	22
		Carried down	$552 53

Cr.

1868.			
Mar.	30.	By change from sale	$12 00
May	25.	" 1 bu. seed-corn	1 75
June	25.	" cash	100 00
1869.			
Jan.	18.	" " of Jew	30 00
"	18.	" error in turn'ps	70
Feb'y	13.	" overcharge on churn	50
"	"	" 1 square, to Martin	2 00
"	"	" disc. on note	6 35

"	"	" 330 lbs. pork to Lakin	26 40
"	"	" labor on B. store	434 50
"	"	" cash for B. store	3,000 00
"	"	" in. at 10 % from April 23, 1868, to Feb'y 13, 1869	241 66
			$3,855 86
		Am't of debt bro't down	552 53
			3,303 33

Dif. in dr. & cr. carried to Ledger E, page 71.

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131 *L. Lakin.*

LEONARD LAKIN, being first duly sworn, on oath says, for defendant:

Q. What is your name, age, occupation, and residence?

A. Leonard Lakin; 37 years of age; clerk in a hardware-store in Janesville, and residence in Brodhead.

Q. You are the Leonard Lakin named in these proceedings, are you?

A. Yes, sir.

Q. When did you commence business in Brodhead?

A. I commenced business in Brodhead for R. J. Richardson in the year 1860, and continued for him about sixteen months, and I then bought him out, and continued the business by myself until 1865, and then took in a partner whose name was Norman Hall, and continued with him about two years, and from that time on continued the business myself until January, 1870.

Q. You may state briefly what your business was, and the different places in which you did business prior to your going to Brodhead?

A. The first that I ever was in a store as a clerk was in a grocery-store on Congress street, Troy, N. Y., for Marston & Stone. Was with them some six months, I presume. The next I was in a store was on River street, Troy, N. Y., in jewellry-store, with A. D. Wilcox; was there as a clerk about a month. Next place I acted as a clerk was in Janesville, Wisconsin, in a grocery-store, for A. K. Allen. I was next in the grocery-business as a partner with G. H. Williston in the same store that was occupied by Allen. I was with Allen about two years, and with Williston two years. That was down until the spring of 1858. I was next a clerk in a grocery-store in Janesville for Wheeler and Brett. Was there three months. Next was in business for myself in the grocery-business at a place then called Line, now called
132 Rochelle, Ill. Was there about one year. Next was a clerk in a grocery-store in Janesville, for Pierson, and was with him six months. Then next a clerk for R. J. Richardson in the hardware-business in Janesville. Was with him about six months, and then went to Brodhead to run a branch store for Mr. Richardson at Brodhead. I had charge of the store, and was to receive one-half of the profits for my services, and that continued about sixteen months, when I bought him out, and commenced business at Brodhead, as I have stated.

Q. About what amount of sales did you do annually at Brodhead after you commenced business for yourself in 1862?

A. I can't give the exact amounts. I think I can approximate it. In 1862-'3, about (each year) 15,000.00; in 1864 to 1870, about (each year) from 20,000 to 28,000.00. I think $28,000.00 was the largest amount.

Q. What was the character of the business in 1862; and what, if any, change was made after that in the character of the business?

A. From 1862 to 1868 it was hardware, stoves, tinware, and agricultural implements. From then until the failure it was hardware and agricultural implements.

Q. What did you do with the tinware and the stoves in 1868?

A. I sold them to Spaulding & Brown, of Brodhead. The amount of that sale was a little over $6,000.00. I do not remember the exact amount. The sale was made about February, 1868. I think the terms of the sale were $2,000.00, cash down; the balance, a note payable as fast as the stoves should be sold. I got on that note, I should think, in the year 1868, about $1,000.00. I expected, when I sold, to re-
133 ceive about the whole of it in 1868.

Q. About how much remained due on that note ag't Spaulding & Brown on the 1st day of April, 1868?

A. Very little, if any, paid at that time, I should judge. Think there was due about $4,000.00 at that time.

Q. Did you retain that note until your failure?

A. I did not. I retained it until some time in the summer of 1869. I received on it, in 1869, about $1,200.00.

Q. About what amount of stock did you carry each year from 1862 to 1869 annually?

A. In 1862, about $3,000; in 1863 and '4, from $5,000 to $6,000. From 1864 till the time of selling the stoves and tinware in February, 1868, from $10,000 to $15,000, I should think. I have given none of these figures as exact figures. From the time I sold the tinware and stoves, from $9,000 to $12,000, I should judge.

Q. About what was the amount of your stock April st, 1868?

A. I should say from $9,000 to $10,000.

Q. What, if any, property did you have April 1st, 1868, besides your stock, and this note of $4,000 against Spaulding & Brown's, and your homestead, and in what did it consist?

A. It consisted of notes, and book-accounts, and real estate. It is impossible to give the amount of the notes and accounts, but I should say about $6,000. I should say I owned then about $2,000 in real estate, but don't remember exactly what real estate I owned.

Q. Where was the real estate situated, and where did the persons reside against whom you had these notes & accounts? In what vacinity?

A. The real estate was situated in the village of Brodhead, Green Co., Wisconsin, with the exception of a small amount in the State
134 of Iowa, which I valued at about $300. The persons against whom I had notes & accounts lived in Brodhead and vicinity.

Q. How did you come to build the store, and what arrangements, if any, did you make, in the spring of 1868, in regard to building it?

A. My stock was in a wooden building, which I rented, which was located in a wooden row of 8 buildings, with wooden blacksmith-shops, & carriage-maker's shop in the rear, and consequently I could not obtain insurance, except a very high rate, from 5 to 8 per cent., and as I was constantly in fear of fire, I thought I must make some arragement to build a brick-store. I had heard that my father-in-law had sold his farm at Milton, consequently I went up there to see if he would loan me some money to build the store with. I made an arrangement with him to loan me $3,000, and come to Brodhead, and superintend the building of the store.

Q. State just what the arrangement was between you and your father-in-law?

A. I asked him if he would loan me $3,000, and come to Brodhead, & superintend the erection of the building, and said to him, if he would do so, that I would give him a mortgage upon the building to draw 10 per cent. interest, and would keep the building insured for his benefit.

Q. Ten per cent. interest from when?

A. From the time that work was commenced on the store.

Q. And for how long was you to have the money?

A. There was no agreement about the time, to my recollection.

Q. Were you to have time or not?

135 A. I was to have considerable time, or something to that effect. The understanding was that I should have time, but there was no time specified.

Q. Did he agree to that?

A. He did.

Q. What, if anything, was done in pursuance of that agreement?

A. He shortly afterwards received the first payment on his farm, and deposited it in the First National Bank of Janesville.

Q. For what purpose?

A. For the purpose of letting me have to use in the building my store.

Q. Was anything else done in pursuance of that agreement?

A. My father-in-law shortly afterwards came to Brodhead, and the building of the store was commenced, and he checked the money from the bank, as I requested, for the payment of material, &c. These are the checks, the ones described by Mr. Hayner. You will see that the amount is something more than $3,000. The reason for that is, I did not keep an account of the amount that had been checked of the money, and wrote Mr. Doe, the cashier, to ascertain the amount then in the bank. He wrote back, stating the amount to be some three or four hundred dollars—I don't remember the amount which I drew for—and subsequently received a letter from Mr. Doe saying that the amount was overdrawn. The reason that it was overdrawn was that there was some checks out when he wrote the former letter. I then made a deposit to cover that *I then made a deposit to cover that* amount, so that all I had to go into the store was $3,000. The store was commenced about the 23d of April, and was

136 nearly completed, so that I occupied it on the 24th of November following. My father-in-law bought most of the material. I purchased some articles myself. The method of paying for materials and labor was generally by his verbal order or by his written order. Some articles and some labor, when I knew the amounts to be correct, I paid without Mr. Hayner order. The reason of his giving orders at all was because he was attending to the details of building the store, and I was attending to my hardware business, and consequently could not know amounts of bills. The cost of the store, according to the best of my knowledge, was about $8,500. That did not include the lots on which it was built. I owned that previously.

Q. Did you have any account with Mr. Hayner at that time?

A. I did have a book account with him, of which Exhibit "A" is a true, correct copy of my ledger. The account is correct to the best of my knowledge and belief.

Q. Did you at any time look over with Mr. Hayner?

A. I did, on the 13th day of February, 1869. We looked the account over. I gave Mr. Hayner for his work—allowing him for the same

$2.50 per day, which amounted to $434.50. I also gave him credit for the $3,000, and interest from the 23 day of April, 1868, to that date. I then struck a balance that he might see just how much was his due, and I then asked him if I should make the notes & execute the mortgage that I had agreed on. He replied no, not just now; "I don't know just exactly how I want it;" I supposed referring to the time. He said, "I am going to Woodstock to attend to my business there, and will
137 let you know when I want the mortgage," or words to that effect.

Q. Did he go to Woodstock, and did he take his family there?

A. He went himself, but did not take his family till the 1st of May.

Q. What occur'd the 1st of May?

A. The first of May, or about that time, (1869,) he came to Brodhead and moved his family and household goods to Woodstock, Ill. I then asked him if he then wanted the book-account fixed up—meaning, of course, by notes and mortgage. He replied that he was in a great hurry and would not attend to it at that time, but would let me know when he wanted them. The next that occurred in regard to that mortgage and the notes, I went to Woodstock with my wife and daughter, I think about the first of August, 1869, to make a visit, as it had been my usual custom to go home (as we called it) every summer to spend a few days. When I left Mr. Hayner's house to go to the depot on my return home, my father-in-law accompanied me to the depot, and on the way there said to me, "Leonard, you may make me that mortgage when you get home." He said something about stocking his yard, but I can't give his words. My recollection is that he spoke of freights being low then, that they would be high as soon as wheat commenced to move, and he thought he could raise money on those notes. I said what time shall I make them. He said, suit yourself about that; I would prefer they should run a long time, as I think most men who have money to loan prefer that kind of paper. I replied, I will attend to it as soon as I get home.

Q. Was anything said about its being in installments?

138 A. No, sir.

Q. What was next done?

A. Upon, or soon after, my arrival at home, I executed the mortgage, obtained the insurance, made the notes, and sent them to my father-in-law.

Q. Were they accompanyed by any statement?

A. Yes, sir; a statement; a copy of which is annexed to the answer in this cause.

Q. Was the mortgage executed on the day it bears date?

A. Yes, sir; and also the notes. They were sent on the same day they were executed to Mr. Hayner by mail.

Q. Did Mr. Hayner return to Brodhead at any time after he removed away in May, 1869, and prior to the execution of this mortgage?

A. Not to my knowledge.

Q. Prior to building that store, and in building it, who, if any one, did you intend should occupy it, and for what length of time?

A. I intended to occupy it myself, and as long as I should do business. I intended to do business as long as I lived and had my health.

Q. Are you acquainted with James Wager and Andrew B. Fales?

A. Yes, sir; and also Mr. Johnson, who is now a partner with them. I first became acquainted with Mr. Fales about eighteen years ago in Troy, N. Y., and with Mr. Wager in the summer of 1866 at Troy, N. Y., and with Mr. Johnson at about same time at Janesville, Wisconsin. I

had dealings with Wager & Fales, and commenced, I think, in 1863. I bought stoves of them at that time. Dealt with them every year after that until 1870. Some years I bought more and some years less of them, ranging from three or four hundred dollars a year to three
139 or four thousand dollars. This unpaid bill for which this mortgage was given to Wager & Fales accrued mostly, I should think, in May. The bill was for stoves. I bought a large amount of them at one time, I think in 1867, and did not succeed in selling near as many as I expected to sell, & consequently had a large stock to hold over. I stated the condition of the stove trade to the firm by letter. They replied, in substance, that they would carry the account by my paying 7 per cent. interest. I paid them some money on account, I don't remember how much. In the summer of 1869 Mr. Johnson, who acted as their traveling salesman, while west on his usual trip, called on me and thought, as I had gone out of the stove trade, that I ought to square up the account. I told him that collections were very slow, but that I had large amounts standing out, and that I had built a brick store which had cost considerably more than I had anticipated that it would cost, and asked him if they would not give further time. He said he would lay the matter before the firm, as that was a matter of Wager & Fales, before he went into the company, and would report what they said about the matter on his return from his trip north. He was then going north, and expected to be back to Janesville and Brodhead, and he would report to me there on his return. On his return, about four or six weeks after, (I don't know exactly the time,) he told me that the firm was willing to give further time provided I would give them a mortgage upon real estate. I replied that I did not like to do it then, because if my collections should be as good as they ought to be
140 in the fall I could probably pay them. Mr. Johnson said he would tell the firm what I had said about the matter, and that they would correspond with R. J. Richardson, of Janesville, Wisconsin, and Mr. Richardson would inform me in regard to their wishes. This occurred in August; I should think August, 1869. I don't think Mr. Johnson asked me anything about what I was worth. I told him of my own accord that I had some $10,000 standing out in notes and accounts. I don't think Johnson asked me anything about my condition.

Q. Did you make any propositions to Johnson what you would do?

A. I think I did.

Q. State them.

A. I think I told him that I would try and send them a certain amount of money each month.

Q, Was there anything said about turning out accounts or anything of that kind.

A. No, sir; not that I recollect of. Soon after Mr. Johnson left I received a letter from the firm, in substance, I don't remember their exact language, that they would wait and see what my fall collections would do for me. My fall collections were very poor, and I so wrote to Wager & Fales. The next I heard in regard to the matter that I recollect of, was from Mr. R. J. Richardson, stating that they were willing to give long time, making it in installments, I don't recollect the exact time, provided that I would execute a mortgage. I thought the matter over, and concluded to do so, as by so doing I thought I could meet my smaller liabilities promptly. I went to Janesville I think
141 in November, 1869, and saw Mr. Richardson in regard to the terms of the payments. Mr. Richardson did not see fit to accept

the terms that I felt disposed to give, and corresponded further with Wager & Fales in regard to the matter, and terms satisfactory to myself & Wager & Fales were finally agreed upon, and I executed the mortgage & notes & insurance policy, which I mailed to R. J. Richardson, Janesville.

Q. About how long prior to the execution of those notes & that mortgage did you & Mr. Richardson commenced talking about it?

A. I should think nearly a month.

Q. Did you and Mr. Richardson agree on terms which were subsequently submitted by him to Messrs. Wager & Fales, & which were subsequently on their suggestion changed?

A. I think we did, but I am not positive.

Q. What, if anything, did you at the time of executing these notes & this mortgage to Wager & Fales consider yourself worth?

(Question objected to on account of the word "consider.")

A. I consider' myself worth $12,000 or $15,000, provided my property could be sold at what I consider' a fair value.

Q. Twelve or fifteen thousand dollars; how with reference to your debts?

A. I supposed if my property could be sold at what I considered its value I could pay my debs and have $12,000 or $15,000 left.

Q. Did Mr. Richardson, at that time of taking that mortgage, know that you estimated yourself to be worth then, or about then, the amount you have just stated?

A. Not to my knowledge. I don't think he ever asked me what I was worth.

142 Q. How much, if anything, did you consider yourself to be worth at the time of executing and sending to Mr. Hayner the notes and mortgage, as you have stated?

A. About the same as when I executed the mortgage to Wager & Fales.

Q. Did you, during the last six months of 1869, do a fair business there?

A. Not so good as in the corresponding time for two or three years before.

Q. Did you do a fair business?

A. Everything considered, I don't think I did.

Q. Was any of your paper protested?

A. There was one note protested.

Q. About when?

A. About August, 1869, I think.

Q. Any more than that one note?

A. I don't recollect of any other.

Q. Where was that protested?

A. First National Bank, Janesville.

Q. What was done about that note that was protested?

A. I got it renewed.

Q. How soon after it was protested?

A. I do not recollect; but quite soon.

Q. Within how many days, do you think?

A. I may be mistaken, but I should think within 10 or 12 days.

Q. Was there any time prior to going to Woodstock, about January 1st, 1870, at which you had any idea of stopping business or going into bankruptcy, or being in a condition when you would be unable to pay your debts? If so, state when?

(Objected to by plaintiff.)

A. No, sir.

At 12 m. adjourned till Tuesday, March 7th, 1871, at 9 o'clock a. m.

ANDREW P. HAYNER recalled.

143 *A. P. Hayner.*

Re-cross-examination:

Q. Was the $1,000 note of Mr. Lakin given to you deposited in the First National Bank of Janesville as collateral security for a loan of money, or was it to secure a prior note or a prior indebtedness?

A. It was to secure the note against Lakin which was in the bank and which I had endorsed.

Q. When was that note of Lakin given to the bank?

A. I can't tell; but I think it was a note given some time—months before the failure.

Re-direct:

Q. Do you know about the amount of that note?

A. It was $500.

Q. How soon after you received it did you put that note in the bank as collateral?

A. It was not right off; it was not till after Lakin failed.

ANDREW P. HAYNER.

At 9 a. m. Friday, March 3, 1871, parties appeared.

F. H. Willis.

F. H. WILLIS, being first duly sworn for defendant, says:

Q. What is your name, age, residence, and occupation?

A. My name is F. H. Willis; age, 43. I reside at Madison, and am a produce dealer.

Q. How long have you resided in Madison?

A. Since August, 1870.

Q. Where did you reside prior to August last?

A. Brodhead.

Q. Are you acquainted with Leonard Lakin?

A. I am.

Q. How long?

144 A. Since he first went to Brodhead.

Q. Were you in business in Brodhead?

A. I was.

Q. What business, & how long?

A. When I first went there I was in the business of a tailor; was afterwards in various kinds of business, but principally in produce business.

Q. How long did you live in Brodhead?

A. Thirteen years.

Q. What business did Lakin do while there?

A. Hardware business.

Y. Did he do a large or small business?

A. He did a good fair business for a country town.

Q. Were you acquainted with his general reputation for pecuniary responsibility there in Brodhead during the time Lakin did business there?

A. I think I was.
Q. What was that reputation?
A. I consider it good.
Q. How did it compare during the year 1869 with previous years?
A. I heard no complaint.
Q. Was it as good during 1869 as previously?
A. I think it was.
Q. Were you acquainted with Mr. Lakin's reputation in Brodhead during the time he did business there for honesty & integrity?
A. I was.
Q. What was that reputation?
A. Good.
Q. How did it compare during the year 1869 with it previously?
A. I heard no complaint.

145 Q. Was there any time during the year 1869 or previously that you would have refused to sell him goods on credit if he desired it?

A. I was always anxious to sell Mr. Lakin anything he wanted in 1869, or any other time, & did so on credit, & without security.
Q. How was it with the rest of the community there about selling to him on credit; as a general thing, would they have been willing to do it or not?
A. I think they would, if they had an opportunity.
Q. Were you acquainted with B. R. Clauson in Brodhead?
A. I am, & was.
Q. How intimately?
A. As much so as with any man in town.
Q. What were his feelings towards Mr. Lakin?
A. I never heard him say anything bad about him.
Q. Was he friendly to Mr. Lakin?
A. I think he was till Mr. Lakin built his store arround on the square.
Q. How was it after that?
A. I don't think it was quite so good; he would rather had Lakin stay on Main street.
Q. Were you acquainted with Mr. Clauson's reputation for truth & veracity in Brodhead?
A. I think I am.
Q. What was it, good or bad?
A. I don't say it was good, nor I don't say it was bad.
Q. What was his general reputation for truth a' veracity in Brodhead in 1868 & 1869?
A. I don't know that it was any different one year from another.
Q. Do you mean to say that his reputation is both good and bad in Brodhead?

(Objection as leading.)

146 A. If I should take what people say, I should say it was both ways for truth and veracity.

Cross-examination:

Q. Do you know of Mr. Lakin being treasurer of the school district in Brodhead during the years 1868 or 1869?
A. I do.
Q. Do you know of its being reported in Brodhead that he had used the funds which came into his hands as treasurer of the school district for his own purposes?
A. I think it was.

Q. Did you believe the report?

A. I don't know; I took very little interest in those things. I never believed anything about it.

Q. What do you mean by that answer?

A. That I didn't take any notice of it.

Q. Do you know the amount which it was reputed in Brodhead he had used from the funds that came into his hands as treasurer?

A. No, sir.

Q. What was Lakin's reputation for pecuniary responsibility for the last six months of the year 1869?

A. So far as I was acquainted with his business it was good.

Q. What knowledge had you of his business during that period of time?

A. No more than a citizen would living there and seeing him do business.

Q. Did you know anything really of the amount of his indebtedness in & during the year 1869?

A. I did not.

Q. Did you know anything in fact of the character of his business during that time?

147 A. I should think it was good; I didn't know any facts about his business at all.

Q. You knew, did you not, that he built an extensive store in Brodhead?

A. I thought so.

Q. Did not you think that it was a very expensive store for the village of Brodhead?

A. I did think it was to' expensive for that place.

Q. Did you not know that after Mr. Lakin built that store he was obliged to borrow and did borrow money in Brodhead?

A. I knew of his borrowing $200 of me, but that's all I know of his borrowing.

Q. Is it not the fact that business generally was very dull in Brodhead in the year 1869?

A. I think it was.

Q. Were not collections in and during the year 1869 very difficult and slow in getting, in 1869, in Brodhead?

A. I heard so; that's all I know about it.

Q. Were not the merchants in Brodhead, generally, in 1869, complaining of the dulness of trade and the difficulty of making collections?

A. I should think they were.

Q. Did you know of any exceptions among the merchants in Brodhead?

A. No; it was universal.

Q. Was it or not the fact, in Brodhead, in 1869, that the leading merchants there were, from time to time, during that year, hard up for money?

A. I had no knowledge of it if such was the case.

Q. Your business, while in Brodhead, was not such, was it, that you know much about the condition, financially, of Mr. Lakin or other merchants in Brodhead?

A. My business was such that I didn't know anything about their business.

148 Q. At the time Mr. Lakin made the application to you to borrow the $200, did he state what he wanted it for?

A. I think he said he wanted to pay a bill. I did not enquire particularly about it.

Q. You here stated, in the course of this examination, that you thought the store that he was building in Brodhead was an expensive store for that place. In what respect did you consider it expensive?

A. I thought it was too large and to' far out of town. I think there was too much money in the store for the place.

Q. Do you know what that store cost?

A. No, sir.

Q. Have you ever heard Mr. Lakin say what it cost?

A. No, sir.

Q. From your knowledge of the building and its fittings up, what do you think it ought to have cost in that place?

A. From $6,000 to $8,000.

Q. What do you think would have been a proper outlay for a store building of a merchant like Mr. Lakin in Brodhead?

A. I don't think he ought to have built any store at all. It would have been better for Lakin if he had stayed on the corner; that's my opinion.

Q. Did you think that the business in Brodhead was such that Lakin would have done as well as a merchant in the old store as in building the new?

A. I think he would have done better in the old store for all concerned.

149 Q. Did not, then, the building of the new store have a tendency, in your opinion, to injure Mr. Lakin's business and standing as a successful merchant in Brodhead?

A. I don't know. I can't answer that question any differently.

Q. Was it not, Mr. Willis, the general impression in Brodhead, in 1868, that Mr. Lakin was building an expensive store for that place?

A. I can't say as it was. I didn't hear anybody say it was expensive. I didn't hear anything said about it that I remember of.

Q. What, then, made you think at the time that it was an expensive building for that place?

A. I thought it was to' far out of town, and that he had better stay where he was, in the old store.

Q. Did you hear anything said, by any body in Brodhead, in 1869, that Lakin was or was not pecunearily responsible for all his debts?

A. No, sir.

Q. Was there anything said, one way or the other, about it in Brodhead to your knowledge?

A. No, sir.

Q. May it not be true that large quantities of his paper went to protest during the latter part of 1869, and that during the same period of time he was not able to meet his indebtedness as it matured, and you not know anything about it?

A. I should think it was. I didn't know anything about his business till he failed.

Re-direct:

Q. By whom and in what connection was it reported that Lakin had used funds of the district?

A. I am not able to say who it was. I heard the report, & that was the end of it.

150 Q. In your judgment, did any such report affect, in any way, his standing in Brodhead as to honesty and integrity, or pecuniary responsibility; and, if so, how?

A. I don't think it had the least shadow of any effect on his standing, so far as I know.

Q. You spoke about Mr. Lakin paying some small bills in which you were interested, during your cross-examination, did you not?

A. I did.

Q. Explain what there was about that.

A. If I bought a sheep-pelt, or butter, or any produce, I would draw a check on Lakin for the amount, and he would pay it. I think I did; I am not sure, but think I did.

Q. Do you know how you came to do that?

A. Change used to be very hard to be got in Brodhead, and also small bills. I would draw a draft on Watts & Willis, of Boston, and give it to Mr. Lakin to take to Janesville and draw the money on it for my special benefit there at Brodhead, and then I would check on that, while in Lakin's hands, just the same as if it was in the bank. We had no bank there then.

Re-cross-examination:

Q. Did you sell Mr. Lakin any considerable amount of property, and, if so, what kind of property, in or during the year 1869?

A. The most property I ever sold him at any one time was a pair of Fairbanks scales; whether in 1869 or not, I can't say; it was thereabouts it was after he built his store.

Re-direct:

Q. Did he pay down for the scales?

151 A. He did not; I took a note for six months.

Q. With security?

A. No, sir.

Q. Did he pay it?

A. Yes, sir.

Q. Did you take any security for the $200 that Lakin borrowed of you?

A. No, sir.

F. H. WILLIS.

At 9 a. m. Tuesday, March 6, 1871, parties appeared.

L. Lakin.

LEONARD LAKIN, being recalled for defendant, says:

Q. Can you state any more definitely the amount of your several inventories than you could on Saturday?

A. I can of some of them, because I have the figures which I have taken from an old invoice-book.

Q. Please state them.

A. Invoice of goods taken in 1864, amounted to ($10,393 67) ten thousand three hundred ninety-three dollars and sixty-seven cents; another invoice of goods taken Sep. 13, 1865, amounted to eight thousand four hundred fifty dollars seventy-seven cents; another invoice taken Dec. 31, 1867, amounted to fifteen thousand one hundred sixty-six dollars seventy-eight cents, which were goods at Brodhead; two thousand nine hundred seventy-seven dollars thirty-six cents, goods at Jada; five hundred fifty-one dollars and two cents, notes and accounts at Jada, five thousand two hundred eighty-three dollars eighty-one cents notes

152 and accounts at Brodhead, making twenty-three thousand nine hundred and seventy-eight dollars and ninety-seven cents; invoice taken Dec. 10, 1869, amounted to nine thousand four hundred ninety-three dollars eighty-one cents, being goods.

Q. During the year 1869, did you state to any one in Brodhead the amount you considered yourself worth?

A. I did.

Q. What amount did you state?

A. I stated I thought I was worth from twelve to fifteen thousand dollars.

Q. Did you buy any goods, during the last six months of 1869, of anybody?

A. I did.

Q. Can you give any of the amounts and the date of the purchase by the aid of your books?

A. I think I can.

Q. You may do so, giving the name of the person of whom you purchased, with the date of the purchase and the amounts.

A. John Nazro & Co.: July 12, 1869, one hundred fifty-three dollars and twenty-three cents; July 17, ten dollars ninety cents; July 19, nineteen seventy-five cents; July 27, seventy-one sixty-five; Aug. 7, one hundred and thirty dollars and fifteen cents; Aug. 19, fifteen dollars and fifty-six cents; Aug. 28, one hundred and eighteen dollars and fifty-nine cents; September 23, sixty-six dollars and thirty cents, Sept. 28, fifty-eight dollars and eighty-five cents; Oct. 8, two hundred and twenty-eight dollars and twenty-eight cents; Oct. 14, five dollars and ninety-seven cents; Nov. 26, two hundred seven dollars and fifty-
153 seven cents; Dec. 7, four dollars and fifty cents.

Q. Do you know how the acc't stood between you and Nazro on the 8 of September, 1869? If so, state it.

A. There was due Mr. Nazro at that time three hundred and ninety-one dollars and sixty-seven cents on book account.

Q. Did he have any other indebtedness against you at that time?

A. He did.

Q. About what amount, and in what shape was it?

A. I could not give it accurately.

Q. About what, then?

A. It was over two thousand dollars, I think.

Q. Did you pay any of your indebtedness to Nazro subsequently to September 8, 1869, and if so, how much, and when and how did you pay it?

A. I paid on book account to Nazro Sept. 21; Hender & Ellsworth, draft, one hundred and eighty-two dollars and twenty-two cents; Nov. 22, draft, two hundred dollars; Dec. 20, two Smith and Wesson pistols twenty-seven dollars; one large saw; one set chissels; no price.

Q. Did you pay them anything else subsequent to Sept. 8, 1869, in notes or otherwise?

A. I think not.

Q. Where does Nazro live?

A. He lives in Milwaukee, Wis.

Q. Is there a line of railroad between there and Brodhead?

A. Yes, sir.

Q. Were any of the firm or agents at Brodhead prior to your failure?

A. Yes, sir; Mr. Labke was there, I should think, two or three times in 1869.

Q. About what part?

154 A. I remember distinctly of his being there in the summer once. I think it was his custom to come there perhaps once in three months for the purpose of selling goods. Mr. A. O. Hall, plaintiff in this suit, was at Brodhead in the summer 1869; think in August; I may.

be mistaken about the time; it was in warm weather at all events. Mr. Hall was there again the last days of December, 1869.

Q. Did you make any of *this* purchases you have mentioned of either of the gentleman last named?

A. I am not positive; they were mostly made by order by mail.

Q. Were they or either of them in the store when they were in Brodhead?

A. They were, both of them.

Q. Did you have any talk with them about trade and affairs?

A. I did with Mr. Hall and not with Mr. Labke. I never had *no* special talk with Mr. Labke. He (Labke) always urged me to buy goods.

Q. Did Nazro and Co. grant you any extensions in 1869?

A. They did.

Q. When?

A. At the time Mr. Hall was there in warm weather.

Q. How did their knowledge of your affairs correspond with Wager & Fales'?

A. It was equal, as far as any representations were made by me. I mean that I had made the same representations to both parties. Well, I don't know but there was an exception to that; I don't know but that I had made a statement to Mr. Hall of how much I was worth and not to Wager & Fales.

155 Q. Did you have account with any other person in Milwaukee during the last six months before you failed?

A. I did. I had an account with Pierce and Whaling. I had an account with James Wood and Co. for a short time.

Q. Were these general creditors of yours?

A. They were. I mean Pierce & Whaling.

Q. Were they secured, either of them?

A. Pierce and Whaling held a note.

Q. When did they receive it, and of whom?

A. They received it I think in August. They rec'd it of me.

Q. State the amount.

A. It was about eighteen hundred dollars, I think.

Q. When was the debt contracted, for which you gave the note as security with reference to the time you gave the note?

A. The note was not asked for as security; they said they must have something to put in the place of money. Commencing in April, 1869, I think, and at intervals from that time up to the time the note was given.

Q. Was it all contracted before giving the note?

A. I think it was. It was not given for the purpose of obtaining further credit.

Q. What was it given for?

A. Their agent said to me that the way they were selling goods they must either have money or something in the place of it. I told him I could deposit that note with them if that would be any accommodation to them.

Q. Had either of the firm of Pierce and Whaling or any of their agents been to your store prior to the time of depositing that note with them?

A. Yes, sir; for the purpose of selling goods.

Q. About when, and who came?

156 A. Mr. Arnold had been there, and Mr. Cole quite frequently. Mr. Arnold had been there occasionally.

Q. Occasionally when and frequently when?

A. During the twelve months previous to their taking the note, and perhaps longer.

Q. Did they sell you any goods or you pay them any money subsequently to September 8, 1869?

A. Yes, sir; amount of goods purchased, six hundred and fifty-five dollars and three cents; amount of cash paid, eight hundred and sixty-five dollars and eleven cents, according to the books.

Q. Was any of that payment of eight hundred dollars on the debt for which you had turned out the note?

A. I think, perhaps, some of it was due them when they took the note.

Q. What is the date of the last purchase of goods you made of them, and the amount?

A. Oct. 28, 1869; amount two hundred and ninety-seven dollars, and fifty-two cents.

Q. State the date of the last payment you made them, and the amount.

A. Dec. 1, 1869; two hundred and five dollars, according to the books.

Q. You may state whether you have ever talked with their agent whom you have named, at the times they were at your store, as you have stated, about your business and your affairs.

A. I did not until the time Mr. Arnold took the note. I think I told Mr. Arnold I had a large amount due me in notes and accounts which, if I could collect, would make me easy, or something to that effect.

157 May be I had some other conversation with him, but I don't remember what it was.

Q. How did their knowledge of your affairs, at the time of giving that security, compare with that of Wager & Fales at the time you gave them the mortgage?

A. As far as I knew about it, or as far as either had obtained information from me I don't know that there was any difference.

Q. How was it as to Andrew P. Hayner at the time you gave him the mortgage?

A. I don't know that there was any difference, with the exception that I might have told Mr. Hayner that I thought I was worth twelve or fifteen thousand dollars.

Q. Was there any difference in the amount which you say you stated to Mr. Hayner and Nazro, in 1869 any statement you may have made to any other persons in the year 1869, as to the amount of property you was worth?

A. No, sir; not to my knowledge.

Q. Can you tell about the amount of goods, if any, purchased by you subsequently to Sept. 8, 1869, besides those of Nazro and Pierce & Whaling.

A. I do not think I can give a very accurate estimate.

Q. Come as near as you can.

A. Might have been a thousand dollars.

Q. How much, if anything, should you estimate did you pay out to creditors who were not in any way secured subsequently to September 8, 1869, and prior to your failure?

A. Pretty hard matter to get at; might have been one thousand, might have been two thousand; I can't tell.

Q. State about when and under what circumstances you as'ertained your real condition.

158 A. On the 24th day of December, 1869, I went with my family

to Woodstock, Ill., to my father-in-law to spend Christmas, as I had been accustomed to for several years. I left the store open, doing business, with Mr. John Taylor, who had been with me for about nine years. There was no one left with him. On the 26 Dec., 1869, I think, Mr. Norman Hall, a friend of mine who had formerly been my partner, and was living in Brodhead at that time, came to Woodstock and showed me a letter that he had just received from a friend of his, who was book-keeper in a large establishment in Chicago, stating that there had been a report sent to the Mercantile Agency in Chicago, from some one in Brodhead, that I had made an assignment to my father-in-law. I thought as such a report had been sent in that it might make me some trouble. I went to Janesville and saw my attorney, Mr. J. B. Cassoday, told him of the report and gave him a statement of my affairs as I supposed they were. I said I thought I was owing about twelve thousand dollars besides what I owed my father-in-law, and that I had goods, notes, accounts, and real estate which in my opinion were worth twenty-eight or thirty thousand dollars. He advised me to go home and make a statement of my affairs to my creditors, asking them for extensions if necessary, telling them there was no truth in the report of the assignment; get my friends to endorse for me, if necessary, and he thought there would be no trouble in fixing my matters up satisfactor'y. I went back to Woodstock with the intention of getting my family and going home, and while there received a letter
159 from Mr. John Taylor, from Brodhead, that Mr. Nazro's man and Pierce Whaling's man were there and wished to see me. I took the next train for Brodhead, and met them at Hanover; they got into the train I was on, went to Brodhead with me. Mr. A. O. Hall said he was very glad to hear that there was no truth in the report of the assignment, and wished me to give him a correct statement of my affairs on paper. I did so, with his assistance, first putting down the amount of assets, as near as I could arrive at the amount, and then the indebtedness, from memory and what I could get from my books and some that they reminded me of, which took nearly the whole of that day. I was then satisfied that my indebtedness was much larger than I had ever supposed it was. I don't recollect the exact amount we ascertained that day, but I think about twenty-three thousand dollars. I think I came to Janesville the next day, and again laid the matter before Mr. Cassoday, and told him how much worse I had found my affairs than I expected. He advised me to send a printed statement of the true condition of my affairs, as near as I could possibly ascertain them, to each one of my creditors, asking for their advice in the matter. I went back to Brodhead and did so as soon as possible. Printed statements were mailed the first and second days of January, 1870. Mr. Hall had again returned to Brodhead from Milwaukee about that time. I came with him to Janesville, saw Mr. Cassoday again, and he advised me, as Mr. Nazro was one of my largest creditors, and a man
160 of great business experience, and in his opinion an honorable man, that I had better go in to Milwaukee with Mr. Hall and confer with Mr. Nazro, and I did so. Mr. Nazro talked a few minuits with me, and wanted I should meet him in the afternoon at two o'clock at the office of Finches, Lynde and Miller. I met him there at two o'clock or about that time, and he told me that he had made up his mind that bankruptcy was the best course to pursue, and said he wanted I should go into voluntary bankruptcy. I told him I wanted to do whatever was best for my creditors, but that I did not think they would get as many dollars out of the estate in bankruptcy as they would by agree-

ing upon some one as assignee, to whom I would turn over everything I had in my possession for the benefit of my creditors. Mr. Nazro said that the securities which I had given stood in the way of that. I asked him the creditors could not agree upon some legal authority to whom they would submit the validity of the securities. He said no, the persons holding the securities would not probably agree to anything of the kind; he said further that if I did not go into bankruptcy voluntarily, that he should file a bill in bankruptcy against me, and wanted I should go into bankruptcy that afternoon. I replied that if I must go into bankruptcy I wanted to go in in the way which was the best for my creditors, and asked time to go to Janesville and see my attorney, which he granted, but said if you do not return here day after to-morrow I shall file a bill, meaning, as I supposed, a bill in bankruptcy. I
161 came to Janesville, saw Mr. Cassoday, and he said if I must go into bankruptcy it would be better for my creditors to go in voluntar'y, as the court expenses would not be so great, or something to that effect. I then immediately filed a petition in bankruptcy and wrote Mr. Nazro that, as I had complied with his request, I supposed there was no necessity of coming on to Milwaukee.

Q. What were the names of the two men representing Nazro and Pierce and Whaling, which you found on coming back from Woodstock?

A. A. O. Hall, plaintiff, and T. S. Cole who had been there previously. Cole represented Pierce and Whaling, and Hall represented Nazro.

Q. What did they or either of them want of you?

A. Mr. Cole wanted some money on the indebtedness to Pierce & Whaling. I don't recollect that Hall asked for anything except a statement.

Q. Did Hall have any statement partially made out?

A. I don't recollect of seeing him have any.

Q. How long were you and Hall getting up that first statement?

A. About the whole of one day, I think.

Q. Was it a correct statement?

A. It was perhaps nearly correct as far as it went, but it was not a full statement.

Q. What, if any, changes were subsequently made, and what, if any, additions were made?

A. I believe a few of the amounts that were given were increased, and other indebtedness that was not thought of at that time was added, that increased it some five or six thousand dollars; I don't know the exact amount of the increase, but it was about that, in my opinion.

Q. How soon was it completed after the twenty-three-thousand-dollar statement.

162 A. The next statement, which was a printed one, mailed to each of my creditors, was completed about the first of January, 1870.

Q. About how long after the other?

A. Three or four days, I should think. That statement showed the indebtedness to be about twenty-eight thousand dollars, I think.

Q. How did the five or six thousand come to be omitted from the first statement?

A. By not having any means at hand to as'ertain the exact amount, and, it being forgotten, overlooked I suppose.

Q. Did both statements include the mortgage?

A. They did, I believe.

Q. Did you at any time hold any office in Brodhead?

A. I did.

Q. What was it; when did it begin; when did it end?

A. I was treasurer of the Presbyterian Church at that time, I think. I think it commenced about four years previous to that; it has not ended.

Q. Are you treasurer now?

A. I believe there has been no treasurer elected in my place.

Q. Were you at any time a defaulter to the church?

A. No, sir.

Q. Did you ever use any money that belonged to the church. If so, state when, how much, and under what circumstances you used it.

A. I used money sometimes belonging to the church; I cannot say exactly when or how much. The circumstances of my using it were these: The trustees of the church had no treasurer's book. They
163 talked from time about furnishing me a book; in the mean time it was understood that I was to keep a debit and credit account with the church in my ledger. Sometimes the church was owing me; sometimes I would have money in my hands belonging to them. When the trustees did procure a book, I requested that a committee of two be appointed to examine my account with the church and transfer the correct balance from my book to the church-book. Such committee was appointed, and performed the duty, and made a report on the church-book of the amount in my hands, which I then credited in the church-book.

Q. About how long did you keep the moneys on your book prior to transferring them to the church-book?

A. I think between two and three years.

Q. About when was it transferred to the church-book?

A. I think it was in the last part of sixty-eight.

Q. How were the monies kept after the transfer to the church-book?

A. I think there was not a great amount of money in my hands at any one time after the transfer; what there was was kept with my money.

Q. How was that examination of that committee; satisfactory or otherwise?

A. They expressed themselves to the board of trustees that it was satisfactory.

Q. Did any of them ever express any dissatisfaction at any time to you?

A. They never did.

Q. Did you ever hold any other office there?

A. I did.

164 Q. What office?

A. Treasurer of Bicknell Lodge two years. I was treasurer of the Brodhead school-district.

Q. When did that commence?

A. It commenced in April, 1867.

Q. How long did it continue?

A. A little over two years. I was re-elected twice.

Q. Did you ever use any monies belonging to the district, and if so, under what circumstances?

A. I did use monies belonging to the district. The circumstances were that there would sometimes be money in my hands belonging to the district for some time, and the first year I was treasurer I had the collection of a special tax which amounted to four thousand dollars, for which I received no pay. It was generally understood by the board that I was to use money if there was any remaining in my hands. No special agreement, but that was the understanding. I could not state how much

I use' or how long. When there were orders drawn on me I paid them. The orders were drawn by the president of the board and the clerk, I think. When I resigned my office as treasurer of the district, on May 17, 1869, I think H. B. Stewart was elected to fill the vacancy. I had in my hands money amounting to something over eleven hundred dollars. I think I can give the exact amount, eleven hundred and thirty-six dollars and eighty-two cents, for which I hold H. B. Stewart' receipt, it having been paid over to him.

(Defendant here offered in evidence a receipt signed H. B.
165 Stewart, treasurer, for eleven hundred and thirty-six dollars and eighty-two cents, dated May 27, 1869, marked Exhibit B 2; also a receipt dated May 22, 1869, signed H. B. Stewart, treasurer, for bonds, coupons, orders, and accrued interest on bonds to the amount of thirty-six hundred and sixty-two dollars and one cent, marked Exhibit C 2.)

Q. When did you receive those receipts, with reference to their dates?

A. On the days which they are dated, I suppose.

Q. From whom?

A. From H. B. Stewart, treasurer of Brodhead school-district.

Q. State the circumstances under which they were taken, and how the payment' were made.

A. When Mr. Stewart was elected to fill the vacancy occurring upon my resignation, I asked him if he would want the whole of that money, or if he would loan some of it, as I knew he was loaning money at 10 per cent. He replied he thought he could fix it so as to let me have a thousand dollars, as he would not have to pay it out on orders for some time, I think two or three months. I said, if you do not wish to loan it I will get you the money. He told me to get up a note and he would be down in a day or two and I could transfer the funds to his hands. He came down; we ascertained the amount in my hands at that time to be eleven hundred and thirty-six dollars and eighty-two cents. He said, I will give you a receipt in full for the whole amount, and then I will loan you a thousand dollars. We fixed upon the time the note should run. He said I need not pay any attention to the time when the note was due, as he would let me know whenever he wanted any money. He might
166 want a hundred or two dollars at a time. Whenever he wanted any he notified me a day or two beforehand, and I paid him one or two hundred dollars at a time, as he wanted, until the last payment, which I think was four hundred dollars, which I paid him when he notified me he wanted it.

Q. Did Mr. Stewart express any dissatisfaction with your manner of paying that note, to you?

A. He did not.

Q. Who constituted the board at the time of your resignation and settlement in May, 1869?

A. H. B. Stewart, R. H. Rugg, Reuben Golden, Rowley Morris, L. E. Tonner, Leonard Lakin.

Q. Did they as a board ever in any way express themselves as to your conduct as treasurer of the district?

A. They did at the time of my resignation.

Q. Have you got any such expression?

A. I have a copy of a resolution unanimously passed by the board and ordered published in the Brodhead Independant, May 17, 1869.

Q. At what time was it published?

A. May 28, 1869. (A copy of the resolution as published in the Brodhead Independant here offered in evidence by the defendant, marked Exhibit D 2.)

Q. Do you know whether Mr. Stewart was present at the time of the passage of that resolution?

A. He was.

Q. Do you know whether he voted for it?

A. I do not know only that the clerk declared it unanimously passed on the first Tuesday in April, 1869. After serving as treasurer of the district for two years, I was re-elected as one of the school-board
167 by the district by ninety majority, as I see from a notice in the Brodhead Independant published about that time.

Q. Did B. R. Clauson have any collection against you at that time?

A. He did have one at one time.

Q. What about it?

A. I don't remember anything about it, only that he had one and I paid it.

Q. Did you at any time during the last six months before your failure state to Clawson that your credit had been reputed bad? and, if so, state all there was said about it.

A. I have no recollection of making any such statement to Mr. Clauson.

Q. Did any produce-dealers deposit any money with you at any time?

A. A number of them did; very large amounts, at different times.

Q. During what years?

A. I think from the year 1863, every year up until the bank was opened in Brodhead, which I think was in the year 1869.

Q. What were the names of those persons?

A. Wood S. Clark, Blanchard & Cole, William Hudson, S. C. Morrison, William H. Strauser, one or two others, I do not recollect their names.

Q. Did you ever refuse or neglect to pay checks from Strauser on you when you had money in your hands?

A. Not that I recollect of.

Q. Did he ever express any dissatisfaction with your handling of his money?

A. He did, while intoxicated.

Q. More than once?

A. Yes, sir; several times.

Q. Did he ever when he was not intoxicated?

168 A. No; never.

Q. Did you have any settlement with him?

A. I did, through his book-keeper and business man, C. Seeber.

Q. Did Mr. Seeber express himself in any way in regard to that settlement; and, if so, how did he come to do it?

A. He did by publishing a card in the Brodhead Independant. I did not know that the card was to be published until I saw it in the paper. I then asked Squire Seeber why he had published such a card. He said that Strauser, while intoxicated, had reported that I had twenty-five or thirty thousand dollars of his money, and that some of my enemies had been trying to use it to my disadvantage, and that he did not like to see a man rode down in that way.

(The defendant here introduced said card in evidence marked Exhibit E 2, and also a receipt dated Dec. 24, 1868, for ninety-six dollars and forty-seven cents, in full for settlement of all accounts to date, and signed Christopher Seeber for W. H. Strauser, marked Exhibit F 2.)

Q. Did you state to B. R. Clauson in 1869, or at any time, that you were hard up or hard pressed for money?

A. I never did.

Q. What was the feeling between yourself and Mr. Clauson?

A. I was in business next door to Mr. Clauson two years, and a few doors from him on the same street three years more; his feeling towards me and mine towards him was friendly as far as anything I know, until I commenced building my new store; then he gave me a severe talking to, and told me he would go his bottom best for me; he has never seemed friendly since.

169 Q. What was the feeling during 1868 and 1869 between H. B. Stewart and yourself?

A. If I am to judge by his actions, it was unfriendly; he always appeared friendly to my face.

Q. What was the feeling existing during those years between yourself and J. F. Mac', senior.

A. Unfriendly, very.

Q. When did that commence?

A. It commenced on his part in 1867, I think.

Q. Were you on speaking terms?

A. I always spoke to him whenever I met him until my failure, or about that time; he is the only man on earth but what I speak to when I meet him, if I know him.

Cross-examination by Mr. Finch:

Q. Do you know Mr. M. Morse, of Brodhead, Wisc.?

A. I do.

Q. Did you know him in 1868 and 1869?

A. I did.

Q. Did Mr. Morse have any conversation with you at any time in the year 1869, in reference to your pecuniary condition?

A. I think he did, in Nov. or Dec. of that year.

Q. For what purpose did he have that conversation with you?

A. He talked about buying out Spaulding and Brown, who were in the stove and tin-ware business, and occupied a part of the same store that I did.

Q. Was not the conversation between you and Mr. More as to your pecuniary condition brought about by your wanting Mr. More to assist Mr. Brown, his son-in-law, in going to business with you?

A. It might have been that way; I did not so understand it.

Q. Did you at that time make up for him, at his request, a state-
170 ment, or partial statement, of your indebtedness.

A. I think I did, or told him about what I owed.

Q. What amount did you then state to him that you owed?

A. I do not recollect exactly, but I think twelve or fifteen thousand dollars.

Q. Was it not over fifteen thousand dollars?

A. I do not think it was.

Q. Did you make the amount of your indebtedness any less at that time than it really was?

A. Yes, sir; a good deal less than I found it really was in December, when I made the statement to Hall.

Q. How did you ascertain the amount which you gave to Mr. Morse at that time as your indebtedness.

A. Merely from memory, I think.

Q. Did you call off or state the amount of your indebtedness at that time, and was it put down upon a slip of paper?

A. I think what was put down was taken in that way.

Q. How much of the amount which you gave to him at that time as your indebtedness was then past due?

A. I cannot tell—don't know.

Q. State the amount as near as you can.

A. I don't know whether I had then fixed up with Wager & Fales or not. It is impossible for me to give anything like a near estimate of the amount past due at that time.

Q. State whether or not Mr. Morse, after that showing by you of your indebtedness, stated to you in substance or to the effect, that if you owed that amount of money he did not want to put any of his money into that concern.

A. I do not recollect of his saying so to me.

Q. Was this Mr. Morse the father-in-law of Brown, of the firm of Spaulding and Brown?

171 A. Yes.

Q. What is his business?

A. He is a hardware merchant, a lumber-dealer, and a money-loaner.

Q. Is he a man of wealth?

A. Reputed to be, for that town. I do not know myself.

Q. What did he say about the amount of your indebtedness as you exhibited it to him?

A. I do not recollect that he said anything. He is a man of very few words.

Q. Was he at this time looking over your indebtedness for the purpose of connecting himself or his son-in-law, Mr. Brown, in any business relations with you?

A. I so understood it then.

Q. Did he, after that statement of your indebtedness, make any arrangements to go into business with you, either for himself or for his son-in-law?

A. No, sir.

Q. Was it not solely for the reason, as you understood it, that you were so largely indebted that he refused to make any arrangement with you for business for himself or his son-in law?

A. I do not know. He never gave me any reason, to my recollection, and I never asked him for any reason.

Q. Did you, after you had made up the statement of your indebtedness and shown it to him, state that *that* there might be other indebtedness which you was then owing, but could not recollect in substance, or that effect?

A. I have no recollection of making any such statement.

Q. Will you state that you did not make that statement?

172 A. No, sir; because I have no recollection about it one way or the other.

Q. As a matter of fact, how much did you owe at the time you made up that statement?

A. I suppose, now, that I owed then nearly as much as I did when I failed.

Q. How much was that?

A. I do not know the exact amount, but I believe it was about thirty thousand dollars.

Q. How much more did you, in fact, owe at that time than you owed in the month of July, 1869?

A. I do not know.

Q. Did the amount of your indebtedness exceed five thousand more in November or December, 1869, than the amount in July, 1869?

A. I should judge not.

Q. Should you think the difference was greater than three thousand dollars?

A. I do not know. I have no means of ascertaining.

Q. You did ascertain, did you not, at the time you filed your schedules in the bankrupt proceedings the amount of your indebtedness?

A. Yes, sir; but I did not ascertain the amount in July.

Q. How did you ascertain the amount of your indebtedness, as set forth in your schedules in the bankrupt proceedings?

A. By exercising my memory from ten days to two weeks, and what I could learn from my books, and by writing letters to some parties to ascertain how much I owed.

Q. You knew then, did you not, that you was owing a very large amount which did not appear on your books?

A. No sir, I did not. I knew I was owing some that did not appear on my books, but I did not know how much.

173 Q. How much did you suppose, in July, 1869, you was owing, aside from what appeared on your books?

A. I do not recollect now what amount I did suppose, aside from what appeared on my books.

Q. You knew, did you not, that there was quite a large amount?

A. I did not know that there was a large amount.

Q. Was you not, at that time, borrowing quite largely?

A. I was not, in comparison with what I had borrowed previous to that.

Q. Was you not a *a* large borrower during the year, or pretty much the entire year, 1869?

A. I do not think that I was a very large borrower during that year?

Q. What was the princip*le* cause of your indebtedness during the year 1869?

A. There was several causes: One was, I had a very large amount standing out, considering the amount of business I was doing, which I could not collect; an*n*other was, that I had built a store the year previous, which cost over three thousand dollars more than I expected it would; and another was, which I know from my present knowledge, that I paid a large amount of interest money; and an*n*other reason, in my opinion, I don't know it positively, but I have reason to think so, I had by degrees quite a large amount stolen from me.

Q. Did not each and all of these reasons which you have given necessitate your borrowing from time to time money to meet your obligations as a merchant?

A. I think they did.

Q. Well, if that is so, then is it or is it not true, in order to meet your liabilities as a merchant, you did, during the year 1869, borrow

174 large sums of money at high rates of interest?

A. I borrowed during the year 1869—but I do not consider in large amounts as compared with former years. I did not pay over ten per cent.

Q. How much more did you owe in December, 1869, in your opinion, than you owed on the first day of Jan., 1869?

A. I do not know. I could not form an opinion.

Q. Was the larger part of your indebtedness mentioned in your schedules in bankrupt proceedings contracted prior to the year 1869?

A. I think they were.

Q. Did you, at the time you made out the statement of your indebtedness for Mr. Morse, include in that statement the indebtedness which you owed for merchandise?

A. I suppose I intended to.

Q. Your books would show, would they not, all the indebtedness which you owed for merchandise purchased?

A. They would not, I think; and I did not refer to my books in making the statement for Mr. Moore.

Q. You made up, then, the statement for Mr. Morse from memory, without referring to the books at all?

A. I did.

Q. How long were you in making up that statement for Mr. More?

A. According to the best of my recollection five or ten minutes.

Q. And that statement included only about one-half of the indebtedness which you then actually owed?

A. From what I know now I suppose it did not.

175 Q. And you made the statement at that time for the purpose of giving Mr. Morse a truthful idea of your indebtedness at that time. Is that so?

A. I thought it was a truthful statement when I gave it to him; probably if there had been a more careful statement it might have revealed the true condition at that time.

Q. State now any reason or reasons why you have overlooked, in making up such a statement under such circumstances, fifteen thousand dollars indebtedness.

A. I suppose the two principal reasons were my books were not properly kept, and I did not know the amount of my indebtedness, and was very careless in regard to it.

Q. Are those the only reasons which you can offer for that discrepancy of fifteen thousand dollars.

A. I think there are other reasons; one probably was, my credit was good, and those whom I was owing were not crowding me, at least not many of them.

Q. Are those the only reasons.

A. I think there might be other reasons given, but I don't think of them just now.

Q. Now, sir, are you not entirely mistaken as to the time when you state that you made this statement out for Morse?

A. I think not. I think it was in November or December, 1869. I may possibly be mistaken about the time, but that is when I think it was.

Q. Give any reason which you have for thinking so.

A. One reason was my impression that it was just before he bought out Spaulding & Brown, which, I think, was in the winter of 1869 or '70.

176 Q. Did you at any time after you had made out the statement of your indebtedness for Mr. Morse make out a statement for Mr. Hall, the plaintiff, and at his request?

A. Certainly, if I remember correctly.

Q. How long after you had made out the statement for Mr. Morse was it that you made the statement of your indebtedness for Mr. Hall?

A. If I remember correctly the time the statement was made out for Mr. Morse, it was about a month after.

Q. What amount did you give Mr. Hall in that statement as your indebtedness?

A. I think we made it out to be about twenty-three thousand dollars, something like that.

Q. How long *was* you making up that statement for Mr. Hall?

A. I think Mr. Hall and myself were pretty much the whole of one day.

Q. *Was* not that twenty-three thousand dollars made up by you, and in about ten minutes' time?

A. I think not.

Q. Didn't Mr. Hall and you, after you had given him the statement showing your indebtedness to be twenty-three thousand dollars, take the books and go through with them that day, on the examination, find the indebtedness to be twenty-eight thousand dollars or thereabouts.

A. No, sir; I think not.

Q. Did you, while Mr. Hall was there in December, 1869 or later, ascertain the amount of your indebtednes to be then twenty-eight thousand dollars or thereabouts?

177 A. I think, when Mr. Hall returned, the forepart of January, and after I had got out a printed circular, we knew it to be about that.

At 6 o'clock p. m. adjourned till 9 a. m., Wednesday, March 8, 1871.

At 9 a. m., Wednesday, March 8th, 1871, parties appeared.

B. C. Brett.

B. C. BRETT, being first duly sworn for defendant, testifies as follows:

Q. What is your name, age, occupation, and residence?

A. My name is B. C. Brett. I am 35 years of age. I live at Brodhead, and am a physician and surgeon.

Q. How long have you resided in Brodhead?

A. Six years.

Q. Were you acquainted with Leonard Lakin during that time?

A. Yes, sir.

Q. Do you know of his being treasurer of the church during that time?

A. Yes, sir.

Q. For what period?

A. He is treasurer now.

Q. When did he commence?

A. I think in 1869.

Q. Do you know of his using money belonging to the church?

A. No, sir; not for his own purposes.

Q. Did you hold any office in the church?

A. Yes; I was clerk of the board of trustees.

Q. Were you clerk at the same time he was treasurer?

178 A. Yes; and I don't know but he was treasurer before I was clerk. He has been treasurer ever since I was clerk.

Q. Do you know or did you at any time hear of his being a defaulter of the church?

A. There was an intimation of that kind that I heard.

Q. You may state all that you heared?

A. This intimation led the trustees to investigate the matter, & Mr. Laird & myself were appointed a committee to investigate the matter. We did so, and presented our report in writing, *in* which was accepted by the trustees. I have the report here in a book. Mr. Lakin's books were looked over by a member of the church, Mr. I. F. Mack, sen., and he said that Mr. Lakin was in debt to the church $420.69; that amount was greater than the amount Mr. Lakin claimed was in his hands, which led to the investigation. The report of the committee, after investigation, was as follows:

"BRODHEAD, *May* 5, 1869.

"The committee appointed by the chairman of the board of trustees of the Presbyterian Church & Society to investigate the accounts of the treasurer from the commencement of the building of the church to the present time, having attended to that duty, beg leave to report that they have carefully examined said accounts as far forward as Feb'y 8, 1869, and find at that time in the treasurer's hands, $352.31.

"B. C. BRETT,
"T. D. LAIRD, *Committee.*"

Q. Was that report adopted?

A. Yes, sir; by the board.

Q. Was this examination and report of Mack authorized or requested by the board?

179 A. It was not.

Q. Was it voluntary on his part.

A. It was.

Q. Did Mr. Lakin at any time refuse or neglect to pay over moneys in his hands belonging to the church?

A. He did not, as is shown by the books after the investigation. He did not at any time to my knowledge.

Q. Did the board, or any of them, at any time, say or intimate that Lakin had used moneys of the church or that they couldn't get money' when they wanted them?

A. Never, to my knowledge. When the investigation took place Mr. Lakin claimed that there was a little over $300 in his hands belonging to the church. The committee found the amount in his hands to vary but a few dollars from the amount claimed by Lakin, and Lakin accepted our figures as correct.

Q. Was the board of trustees, or any of them, in any way dissatisfied with Mr. Lakin's conduct as treasurer of the church?

A. Not in the least. We thought Mr. Lakin was unjustly accused and we looked sharply into that matter.

Q. Unjustly accused by whom?

A. Mr. Mack, sen.; he seemed to be the only individual who accused him.

Q. Are you acquainted with Mr. Lakin's reputation forhonesty and integrity in Brodhead, from the time you went there to the time of this failure?

A. I am.

Q. What was it?

A. Good, emphatically; so much so that I know of parties who went there as though it were a bank to deposit their money.

180 Cross-examination:

Q. Did you ever hear it reported in Brodhead that Mr. Lakin had used the funds of the school-district?

A. I think not; I don't know but I have heard such stories, but not to give them any credence.

Q. (Ques. repeated.)

A. Yes.

Q. What amount of the funds of the school-district did you hear he had used?

A. I never heard anything about the am't.

Q. You say that you were one of the committee to investigate Mr. Lakin's accounts as treasurer of the church?

A. Yes.
Q. And you investigated that account?
A. Yes, sir.
Q. Did Mr. Lakin keep an accurate account of his moneys which came into his hands as treasurer of the church, so that you could ascertain the situation of that account?
A. Yes.
Q. When did you make this investigation of his accounts?
A. In April, 1869.
Q. State now what method you adopted in examining into that account.
A. We copied every item on the debit side and every item on the credit side of Mr. Lakin's books, and compared them carefully with his books, so as to see if we had got them accurately, and then footed up the debits & credits.
Q. How do you know that Mr. Mack examined Mr. Lakin's books?
181 A. Because I frequently talked with him, and had his figures in this book.
Q. The whole of your examination then consisted of running over the debit & credit sides of Mr. Lakin's books.
A. Not the whole. There were items & bills examined, but so far as the figures in the book are concerned, that is all we had to judge from, and all that Mr. Mack had to judge from. We found no difference in the amounts of the bills entered on the book from the accounts as shown by the books themselves.
Q. Did you examine all the bills & vouchers for money paid out by Mr. Lakin?
A. Probably not all, sir.
Q. How much did Mr. Lakin claim there was in his hands at the time he commenced investigation?
A. I believe, $330, or thereabouts.
Q. Where or in what did you discover the discrepancy between the figures given you by Mr. Lakin and the result you found?
A. I cannot tell you. We arrived at our conclusion in a different manner from Mr. Lakin, he setting down his footings and carrying them to the next page, while we set down the whole and added them up.
Q. Did Lakin keep his account as treasurer of the church in his books in which he kept his other accounts as a merchant?
A. Yes, sir.
Q. When did Mr. Lakin pay, if ever, that balance of $353.31?
A. Whenever called on.
Q. Are you a warm personal friend of Mr. Lakin?
A. I claim to be.
Q. You own property right near his store, do you not?
182 A. No, sir.
Q. How many days were you in examining this account of Mr. Lakin?
A. Perhaps a month.
A. After this settlement did the church procure for the treasurer a ledger in which to keep the accounts?
A. Yes, sir.
Q. Is the book which you have produced here before the commissioner that ledger?
A. Yes, sir.
Q. Why was that new ledger obtained at that time?

A. In order that the accounts of the church might be by themselves, as we did not want to overhaul all of Mr. Lakin's accounts every time we made an examination.

Q. What is the entry, & date of the first entry on the debit side of that new book?

A. Feb'y 13, 1869, paid, per this book, $2.50.

Q. When is the first credit?

A. Feb'y 8, 1869, by amount in treasurer's hands, $352.31.

Q. Does this same book contain Mr. Mack's statement, item by item?

A. No.

Q. Do you know whose figures these are in lead-pencil on this account?

A. No, sir.

Q. Now, in making *in* up your statement with Mr. Lakin, what particular items, if any, of Mr. Mack' account did you find that did not correspond with the facts?

A. I cannot tell. I have a distinct recollection of finding particular items which would account for the discrepancy.

Q. Name any one item.

183 A. I cannot do it, sir.

Q. Did you have this account of Mr. Mack's with you during your investigation of Mr. Lakin?

A. Yes, sir.

Q. Was Mr. Mack present during that investigation?

A. He was not.

Q. For what purpose did Mr. Mack make up this account?

A. I cannot say.

Q. It is copied, is it not, right into the church-book?

A. Yes.

Q. Are the entries in Mr. Mack's handwriting?

A. Yes, sir.

Q. Do you know where, when, or from whom Mr. Mack obtained the items as entered by him on this book?

A. From Mr. Lakin's ledger, the same place that we took them from.

Q. How do you know?

A. Because he told me so.

(Plaintiff here offers in evidence the said account made by the said Mack and copied into the church-book, a copy of which said entries is hereto attached and made a part of this deposition, and marked Exhibit G 2.

Q. Was Mr. Mack, at the time he made these entries in the church-book, an officer in the church or society?

A. I don't know; it is my impression that he was a member of the session. He had nothing to do with the finances of the church.

Q. Was Mr. Lakin's credit as a merchant any different after the completion of his new store-building than before?

A. No, sir.

184 Q. Was not that store-building a very expensive one for Brodhead?

A. I should say no.

Q. Do you know anything of the amount of his indebtedness in 1869?

A. No, sir.

Q. Did you ever *have* any person in Brodhead say anything as to the amount which Mr. Lakin owed in 1869?

A. No, sir.

Q. Did you ever hear any person in Brodhead say anything as to the amount which Mr. Lakin owed in 1869?

A. No, sir.

Q. What persons do you know of depositing any money with Mr. Lakin in or during the last six months of 1869?

A. I don't know of any.

Q. Do you know of his executing a mortgage of $3,000 some time in the fall of 1869, to his father-in-law, Mr. Hayner?

A. No.

Q. Were you his family physician in 1869?

A. Yes.

Re-direct:

Q. Do you know whether Lakin did or did not desire the appointment of a committee by the trustees of the church at the time they were appointed?

A. He did desire it.

Q. Desire it when?

A. Before the committee was appointed.

Q. Who spoke of it first, he or the trustees?

A. He did.

Q. You may state why you did not consider that Mack's figures contained an account, item by item.

185 A. In looking over the figures with Mr. Mack, which he had made, he would state, occasionally, that this amount was made up of several items consolidated into one; still, in the main, I suppose, the items are that.

Q. Was Mr. Mack authorized by any one of the board, or by any one having anything to do with the finances of the church to put these figures in the church-ledger?

A. He was not to my knowledge. The figures were put there by Mr. Lakin' consent, and the board afterwards used the book because it was useless to destroy it.

Q. Did you and Mr. Laird have these figures before you during your investigation of this account?

A. Yes.

Q. Did you and Mr. Laird try & ascertain the true condition of the account?

A. As members of the board of trustees it was our object to make the amount as large as Mr. Mack had, if we could, because the larger we made it the more the church would get; still, we did not want to wrong Mr. Lakin.

Q. Did you & Mr. Laird, or either of you, during that investigation, and for the purpose you have named, confer with Mr. Mack in regard to the correctness of his figures; and, if so, how frequently?

A. Yes; perhaps half a dozen times.

Q. Did you or either of you point out to Mr. Mack the reason for the difference in the balance of the account as he had claimed it was, and as you found it to be?

A. Yes, sir.

Q. What did he say to that?

A. He admitted that that must be the reason for the difference—the reason which I assigned.

186 Q. Did he say anything to you in regard to the matter which raised any doubts in your minds as to the correctness of the balance to which you & Mr. Laird had arrived?

A. No. I now recollect. We thought we found on Mr. Lakin's books an entry of one thing twice in the credit column, mixing up a note & interest in the paying of the minister with a payment on the church fund. The note was Robert Taylor's; afterwards asked Robert Taylor about the dates and the circumstances attending the payment, so that we were satisfied that therein lay the mistake and the difference between Mr. Mack's figures and ours.

Q. Did that investigation originate, or was it induced by any neglect or failure of Lakin to pay over money when called upon?

A. No, sir.

Q. Does the church-ledger which you have here contain an account of the payment of any of the moneys which you then found in Lakin's hands by Lakin and his account subsequently with the church, up to this failure, and the condition of his account at his failure?

A. Yes; it shows that, at the time of his failure, the church owed him $17.00 and over, he having paid that amount over what he had received.

(The defendant here offered in evidence the account from the church-ledger, of what the witness *have* just spoken. A copy is hereto annexed marked.)

Q. Did any reports in regard to Lakin's using moneys belonging to the church or the school-district in any way *effect* his credit in Brodhead?

A. Not to my knowledge.

187 Q. Did they in any way *effect* his standing in the community for honesty and integrity?

A. Not in the least. Those reports were not credited by anybody, with a very few exceptions—personal enemies perhaps.

Re-cross:

Q. What was it that was not credited?

A. The reports that he used moneys which did not belong to him.

Q. Was it ever denied, to your knowledge, that he had used the mo*nies* of the district?

A. No, sir; I never heard the question discussed.

Q. Would you think it honest for a merchant like Mr. Lakin to use $1,000 & over of school-mo*nies*, which came into his hands as treasurer, in the payment of his private debts?

A. If he had good and sufficient bonds so that the district could not be the loser I should think it honest.

Q. Then you would make the honesty of the treasurer in taking money depend entirely upon the ultimate responsibility of the surity on his bond, would you?

A. I should.

The testimony having been read over to the witness, he desires to add as follows:

I should think it was admissible for a man to use $1,000 if he had good sureties on his bond and expected to replace the money in a few days.

Re-direct:

Q. You may now explain what you desire to in regard to what you termed Mr. Mack's accusation against Mr. Lakin.

A. Mr. Mack seemed to fear that the church would not get all that was due to it because Mr. Lakin claimed that he had considera-

188 ble less in his hands than Mr. Mack's figures showed. I can't

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tell whether it personal spite or anxiety for the property of the church that caused Mr. Mack to act as he did.

Q. You have stated that *that* this investigation was in February, 1869, and, if I recollect rightly, that Lakin's term of office commenced in 1869. How is that?

A. I don't know when Lakin's term commenced. He has been treasurer a long time. It must have been two or three years prior to that investigation that it commenced.

B. C. BRETT.

T. D. Laird.

T. D. LAIRD, being first duly sworn, deposes & says, for defendant:

Q. What is your name, age, residence, and occupation?

A. T. D. Laird. I am 38 years old. I reside near Brodhead. I am a farmer.

Q. How long have you been acquainted with Leonard Lakin?

A. Ever since he came to Brodhead.

Q. Are you one of the trustees of the Presbyterian Church at Brodhead?

A. I am.

Q. How long have you been trustees?

A. Some two years.

Q. Was Mr. Lakin treasurer during the time, & is he still treasurer?

A. Yes, sir.

Q. Did Mr. Lakin refuse or neglected at any time while you were trustee to pay over any moneys in his hands as treasurer belonging to the church?

A. He never refused, to my knowledge, or neglected.

189 Q. You have heard the testimony of the last witness, Dr. Brett, in regard to certain figures made by I. F. Mack, senior, and the investigation of Mr. Lakin's accounts with the church by yourself and Dr. Brett as a committee, have you not?

A. Yes.

Q. State, if you know, how the committee came to be appointed—at whose suggestion or request.

A. At the request of Mr. Lakin, if my memory serves me.

Q. Do you know how Mr. Lakin came to make that request? If so, state.

A. It was in consequence of a statement gotten up by I. F. Mack, sen., which Mr. Lakin did not consider correct.

Q. State if you and Dr. Brett were appointed committee for that purpose; and, if so what did you do as such committee?

A. We were appointed as that committee. Dr. Brett & I went and looked over Mr. Lakin's books. We had Mack's figures at the time. Our figures did not agree with Mr. Mack. The conclusion we arrived at was as stated by Dr. Brett in his testimony and in the report in the books.

At 12 m. adjourned till 2 p. m.

At 2 p. m. parties appeared. The examination of T. D. Laird being continued, he testified as follows:

I was not with Dr. Brett through the whole of the examination of these accounts. Dr. Brett was the man that did the business mostly. I was not so much interested as the members of the church were.

190 Q. Did you satisfy yourself as to whether the $352.31 was at that time the true balance between the church & Mr. Lakin?

A. Yes.

Q. Had you any doubt about it?

A. None.

Q. Did the board of trustees or any of them express any dissatisfaction with the conduct of Mr. Lakin as treasurer of the church?

A. I never heared of any.

Q. What was Mr. Lakin's credit in Brodhead in 1868 & 1869?

A. It was good.

Cross-examination:

Q. Did you have any dealings with Mr. Lakin in the last six months of 1869?

A. Yes, sir; I presume I did.

Q. What dealings did you have with him during the last six months of 1869?

A. I could not say. I bought my goods of him mostly.

Q. What was your occupation at that time?

A. Farming.

Q. How far did you reside from Brodhead?

A. I lived just 40 rods outside of the corporation.

Q. Did you examine each item on the debit & credit side of Mr. Lakin's account?

A. After it was drawn off on paper we compared the two. I read off one side while Dr. Brett compared it with the other; that is, one of us read from the book while the other held the copy & compared the items.

191 Q. Did you have in that examination Mr. Mack's account as made up from Mr. Lakin's books?

A. Yes, sir.

Q. Do you recollect any item where there was a discrepency between Mr. Mack's account and the account as drawn off from Mr. Lakin's books?

A. I do not recollect any now.

Q. As the items stood on the books of Mr. Lakin, did they or not correspond in amount with Mr. Mack's statement?

A. I don't recollect whether we compared Mr. Mack's statements with Lakin's books.

Q. You understood, did you not, that Mr. Mack's items of account had been taken from Mr. Lakin's books?

A. Yes, sir; I understood it so.

Q. You were looking, were you not, as one of the examiners on the part of the church, to ascertain whether any, and if any, what descrepancy existed between the items in the account made up by Mack from Lakin's books and the items on Lakin's books?

A. Yes.

Q. Now, if that was your purpose why did not you compare the items of Mr. Mack's accounts with the items of Mr. Lakin's books?

A. I don't think Mr. Mack's account was itemized in detail in every particular. The consequence was, we could not get at it in that way.

Q. Did you try to get at in that way?

A. I didn't try much.

Q. You left the matter pret'y much to Dr. Brett?

A. Yes, sir; he engineered it.

Q. Did you know at any time in the year 1869 that Mr. Lakin had used the moneys in his hands as treasurer of the district?

102 A. No, sir.

Q. Had you never heared the report in Brodhead that he had so used said moneys?

A. Yes, sir; I think there was such a report.

Q. Did you hear to what extent?

A. No, sir.

Q. Did you know anything of the amount of Mr. Lakin's indebtedness in 1869, by report or otherwise?

A. No, sir; I did not.

Re-direct:

Q. Was the account which you & Dr. Brett took from Lakin's books, & which you say you and he compared with Lakin's books, a full itemized account, and did it show accurately the condition of the account between Mr. Lakin as treasurer and the church as it appeared from Lakin's books and such other information as you obtained?

A. It did.

Q. Was that the account that you compared with Mr. Mack's figures?

A. Yes.

Re-cross:

Q. Did you make any change or alteration in arriving at the amount in Lakin's hands, due to the church in the items of debit or credit as they appeared on Mr. Lakin's books?

A. There was something in regard to an account there, I forget now what the item, but found he had credited it in two places in the book.

Q. Credited what or who?

193 A. I can't just place it now what it was.

Q. Do you recollect what that item was?

A. I do not.

Q. Did you yourself ascertain it from the books?

A. No, sir.

Q. How did you get at the fact then?

A. It was Dr. Brett that got at the fact and explained it to me. He discovered it when I was not with him, and explained it to me at another time.

Q. And you accepted Dr. Brett's statement did you?

A. We had Mr. Lakin's book right with us at the time. I accepted his statement, after he pointed it out to me on the book.

Q. Do you recollect now what the amount of that item was?

A. I do not.

T. D. LAIRD.

L. Lakin.

The cross-examination of Mr. Leonard Lakin being continued he testified as follows:

Q. Do you want to change your answer to the last question in any particular whatever.

A. The printed circular I have seen since, and the exact amount of that is $26,447.73.

Q. Is the paper now shown you that printed circular?

A. It is the one I referred to.

Q. Did you take an inventory of your stock on the 17 day of December, 1869, or about that time?

A. I did about that time.

Q. At what figures did you estimate the stock in taking that inventory? Did you take it at cost prices, or how?

194 A. I think it was mostly taken at what we supposed to be present market values, with freight added.

Q. You knew the amount of that inventory, did you not, before you went down to your father-in-law to spend the holidays?

A. I think I did.

Q. Was all or nearly all of the indebtedness except the amount secured by mortgage mentioned in this printed circular due or about maturing in the month of December, 1869?

A. Some of them were due, & some part due. I can't state the amount due.

Q. Could you at that time have sold or converted into money enough of your merchandise & accounts to have paid off your indebtedness due at that time?

A. I do not know.

Q. At the time that you made out the statement of your indebtedness for Mr. Morse had you any assets with which to pay that indebtedness aside from or other than the assets mentioned in this printed circular?

A. I think not except what goods may have been sold and collections made between that time and the printing of that circular.

Q. Was that statement of your indebtedness which you made up for Mr. Morse made up prior to the first day of December, 1869.

A. I do not know.

Q. What's your best recollection about it?

A. I think it was either in November or December that the statement was made.

195 Q. You have some recollection about it; which was it, November or December?

A. I cannot say.

Q. It was before you went down to your father-in-law, was it not?

A. Yes, sir.

Q. How long before?

A. I could not say exactly; but my impression would be that it was nearly a month; it might have been more or less.

Q. Was it before you executed the mortgage which bears date the 15 day of December, 1869, to Wager & Fales, of Troy, New York, to secure the sum of $3,000 and interest?

A. I should think it was.

Q. State now how you expected at that time to have paid $15,000 of indebtedness with such assets as you then had on hand?

A. I did not expect to pay it all at once; I expected to pay up all indebtedness, and of course make new and reduce the amount of indebtedness as fast as I could by sale of real estate, if I could make such sales, and by collections.

Q. Your indebtedness at that time was nearer in fact $30,000 than $15,000, was it not?

A. From my present knowledge I should say it was.

Q. Then is it, or is it not true, that on the 15 day of December, 1869, you was in fact utterly insolvent?

A. I think now that I was.

Q. When or about when in 1869 did any of your creditors commence to ask of you security for their debts?

A. I don't remember the exact time, but it was some time in the summer.

Q. Who was the first creditor that asked you for security in 1869?

196 A. I think it was Wager & Fales, through their agent Mr. Johnson when I asked him for an extension of time.

Q. What was the debt of Wager & Fales, at that time?

A. I think it was about $3,000.

Q. Was that entire debt then past due?

A. It was.

Q. How long or about how long had it been then past due?

A. I do not know.

Q. About how long?

A. I cannot tell about how long without knowing when the goods were bought. I' had been due some time.

Q. Were you paying any interest on that account?

A. I was.

Q. At what rate?

A. Seven per cent.

Q. Where did you first see Mr. Johnson in 1869 in relation to that debt?

A. I think it was in Janesville; it might have been in Brodhead.

A. State now as near as you can, what was said by yourself or Mr. Johnson in relation to that debt at the first interview between him and you in 1869.

A. I think Mr. Johnson said that as I had gone out of the store that I ought to fix up their account. I said I could not pay it then, but that if I had suc'ess in collecting and good sales I hoped to fix up a good part of that coming fall.

Q. Was that all that was said by you and Mr. Johnson at that time?

A. No, sir; there was some further talk about it but I don't
197 recollect his exact language; he was then on his way now, and said he would again see me on his return.

Q. Did you, in that conversation, make any representations to him of your pecuniary condition?

A. I think I told him what I supposed to be the amount that was due me on notes and accounts.

Q. Anything else?

A. I don't know but I spoke about the amount of stock that I had, and perhaps I spoke of some real estate which I hoped to sell, but I am not positive about that.

Q. Did you state to him in that conversation that if everything you had was sold under the hammer you would be worth $10,000 or $15,000?

A. I do not recollect making any such statement.

Q. Did you have two conversations with him in Janesville, on the same day?

A. I do not recollect of having; perhaps I might.

Q. Did you state to him in any conversation that you had with him in Janesville that if your matters were closed up under the hammer you would have more than $15,000?

A. No, sir.

Q. Are you certain of that?

A. I think I am.

Q. Would such a statement as that have been true if you had made it?

A. I do not think it would.

Q. Would you have made such a statement unless you believed it to be true?

A. No, sir; I have always tried to tell the truth. I have sometimes been mistaken.

198 Q. Do you know of Mr. Johnson, on the same day that you

met him in Janesville, calling upon Mr. Richardson relative to your debt to Wager & Fales?

A. I do not know that he called on him in relation to it.

Q. Had you at or before that time made a statement to R. J. Richardson, of Janesville, in order to obtain his endorsement? I mean a statement of your pecuniary condition.

A. I think I did make a verbal statement to him at the time I bought out my partner, which was in 1867. He did endorse for me $3,000 at that time.

Q. Did you make more than that one statement to R. J. Richardson, and, if so, under what circumstances?

A. I do not recollect of making any statement to him until he was talking to me about the mortgage to Wager & Fales. I think I told him then that I thought I owed $12,000 or $15,000, and thought that I was worth about the same amount in property above my indebtedness, or something to that effect.

Q. When next did you see Mr. Johnson after this interview with him in Janesville in 1869?

A. I should think it was six or eight weeks after I saw him the first time before I saw him the next time.

Q. And that was at Brodhead, was it?

A. Yes, sir; I think it was.

Q. Did Mr. Johnson in that interview with you at Brodhead tell you that he had talked with Mr. Richardson in Janesville?

A. I think he did.

199 Q. Did you ask him what Richardson said in that interview?

A. I do not recollect that I did.

Q. Did he tell you, in that conversation, that Richardson said that he thought the giving of a mortgage by you would be the fair thing, or in substance to that effect?

A. I do not recollect that he did.

Q. Did you refuse to give him a mortgage at that time?

A. Yes, sir.

Q. Why?

A. I told him that I thought the giving of a mortgage might injure my credit, and that I hoped soon to be able to pay them quite an amount of the debt.

Q. Why did you think the giving of a mortgage at that time for the small sum of $3,000 on long time would injure your credit?

A. I suppose for the reason that I always thought, and do now, that the giving a mortgage injures a merchant's credit.

Q. In what particulars do you think that the giving of that $3,000 mortgage, in the condition that you was, would have injured your credit as a merchant?

A. I did not consider myself in a condition then to not want further credit.

Q. In other words, you wanted all the credit you could get, didn't you?

A. No, sir; I believe I could have had twice the amount I had if I had wanted it.

Q. Then, if your credit was as good as that, why did you consider that the giving of a small mortgage of only $3,000 to secure a debt long past due would injure your credit as a merchant?

200 A. As good as I considered my credit, I did not consider that I could not do any act to injure it, and I wished to keep it good.

Q. Did you then fear that if a $3,000 mortgage was given by you, and

that mortgage put upon record, that it would impair that good credit you had?

A. I had fears that it might.

Q. Was not that the sole and only reason that you refused to execute that mortgage?

A. No, sir; that was one reason, and another reason was that I thought I would soon be able to pay a large part of the debt, and avoid the necessity of giving the mortgage.

Q. Was this conversation with Mr. Johnson in Brodhead before or after the agent of Pierce & Whaling was out to ask for security on your indebtedness to that firm?

A. Pierce & Whaling's agent never asked me for security.

Q. Did you give security of any kind to Pierce & Whaling for their indebtedness?

A. I did not consider it so when I gave them the note.

Q. You were owing Pierce & Whaling, were you not?

A. I was.

Q. How much?

A. About $1,800.

Q. Was it past due?

A. I think the largest part of it was, according to the terms.

Q. Did you pass over to them, to be applied on that indebtedness in any form, any property of any kind; and, if so, what?

A. I passed over to them a note which I held against Spaulding & Brown. I don't re'mber how much was due on the note, but it was, I think, a larger amount than their indebtedness.

201

Q. Was the conversation you had with Mr. Johnson in Brodhead prior to the turning out the note of Spaulding & Brown to Pierce and Whaling?

A. I cannot say positively, but I should think not.

Q. When, or about when, did you turn out the note of Spaulding & Brown to Pierce & Whaling?

A. I do not remember the date now.

Q. At the time you had the conversation with Mr. Johnson in relation to the giving the mortgage to secure the debt of Wager & Fales, had you executed any mortgage upon any of your real estate?

A. I cannot say.

Q. What is your best recollection as to whether you had or not?

A. It is impossible to say, because I don't remember the date that Mr. Johnson was there?

Q. Can you tell from your books or otherwise the date when you transferred the note from Spaulding & Brown to Pierce & Whaling?

A. I cannot by my books, & I don't now think of any other way.

Q. Was that note transferred to Pierce & Whaling in the fore part of August, 1869?

A. It is my impression that it was.

Q. Were there any other of your creditors besides Wager & Fales & Pierce & Whaling who were urging the payment of their debts, or security therefor, at or about the same time with those creditors?

A. I do not now remember that there was.

202

Q. Had you turned out or secured any creditor with any property or security prior to the turning out of that note to Pierce & Whaling in 1869?

A. I recollect of doing so but once; I think I borrowed some money of Mr. Morse at one time, and let him hold that same note while I had the money.

Q. On what property did Mr. Johnson want you to give a mortgage to secure the debt of Wager & Fales?

A. I think on my store.

Q. Any other property besides the store?

A. I think there was no other property talked about at that time.

Q. Was there any mortgage on the store at that time?

A. I do not know.

Q. Don't you know that no mortgage had been executed on that store at that time?

A. No, sir, I do not.

Q. Didn't Mr. Johnson talk with you for the purpose of obtaining security for the debt of Wager & Fales?

A. I suppose he did, or of getting it paid.

Q. You could not at that time have paid that entire debt and other indebtedness as it was maturing, could you?

A. No, sir; I think not.

Q. Mr. Johnson knew this, did he not, and hence wanted good security?

A. I told him I could not pay it then, and he said if they let me have long time he thought they ought to have good security.

Q. Did you intimate to him any such thing as that the mortgage, if you gave it, would be a second mortgage?

203 A. I do not think that I did.

Q. Was this conversation with Mr. Johnson in relation to the giving of the mortgage prior to the executing the mortgage to Mr. Hayner?

A. I do not know.

Q. Do you recollect the date of the mortgage to Mr. Hayner?

A. No, sir, I don't. I think it was the last part of August.

Q. Was you at Mr. Hayner's prior to the turning out the note to Pierce & Whaling, in the summer of 1869?

A. I cannot tell.

Q. Did you think, at the time you executed the mortgage to Mr. Hayner for $3,000 and over, that it would in any way impair or affect your credit as a merchant?

A. I thought perhaps it might.

Q. Then, if you was in such good credit, and, as you have already stated, wanted to continue that credit, why was you any more willing to execute the mortgage for a little over $3,000 to Mr. Hayner to secure his debt, than to execute a $3,000-mortgage to Wager & Fales on long time?

A. Because I had agreed to do so when I made the loan.

Q. Did you consider that debt any more sacred or honorable than the debt of Wager & Fales?

A. No. I considered them both honorable debts. I don't know as I know what a sacred debt is.

Q. Did you think you were under any better moral obligation to pay your father-in-law his debt than you were to pay the debt of Wager & Fales?

204 A. I did not, to pay it.

Q. Did you think you ought to secure the payment of your father-in-law's debt of a little over $3,000, when to thus secure it would impair your credit as a merchant, and at the same time refuse to secure the debt of Wager & Fales because it would impair that credit?

A. I did, because it was my own proposition to do so when I made the loan of my father-in-law.

Q. Was it not one of the reasons which you had in your own mind at

the time you refused to give Mr. Johnson a mortgage of $3,000 on the store, that you had promised your father-in-law a mortgage to secure his loan of $3,000, and you had not, at that time, executed the mortgage to him?

A. It might have been, but I do not recollect now. At that time, I did not think I should give Wager & Fales a mortgage, but thought I should pay them up.

Q. What amount of capital did you have when you commenced business in Brodhead?

A. I did not have any.

Q. Did you make any money the first year of your business in Brodhead? and, if so, how much?

A. I thought that I did, but do not now know how much?

Q. When did you buy your first real estate in Brodhead?

A. I can't tell you the time.

Q. What real estate did you own in Brodhead in December, 1867?

205 A. I think I owned the three lots where my store is—the one that it is on, and the two south of it. I owned two residence-lots a little over a block north of the store, and one whole block south of the track, and had a contract for a deed of my homestead. I do not know how much I had paid on it at that time.

Q. What was the total valuation of your real estate, in your estimation, in 1867—in Dec., 1867?

A. I do not remember what I did value it at at that time?

Q. What did it cost you, Mr. Lakin?

A. It cost about $1,100, aside from the homestead.

Q. Has there been any time in Broadhead when that real estate was worth more (any time since 1867) than it was worth in 1867?

A. I think there has.

Q. What amount, if any, did you owe on the purchase of that real estate in 1867?

A. I did not owe anything on it.

At 6 o'clock adjourned till 9 a. m., to-morrow.

At 9 a. m., Thursday morning, March 9, 1871, parties appeared.

The cross-examination of Leonard Lakin being continued, he testified as follows:

Q. What amount, or about, of merchandise did you have on hand in December, 1867?

A. About $18,000.

Q. Were goods at high prices at that time?

A. They were not so high as they were previous to that time, & were higher than now.

Q. What amount did you owe at that time? State the amount as near as you can.

206 A. I do not know. I don't think I could make a very clear estimate of what I did owe.

Q. Did you at that time owe any borrowed money?

A. Yes.

Q. Did you owe as high an amount at that time as twelve to fifteen thousand dollars?

A. I should think I did.

Q. Did your indebtedness increase any in Dec., 1867, to June, 1868?

A. I couldn't say.

Q. Did you buy any goods on credit after December, 1867, and before June, 1868?

A. Yes, sir.

Q. What amount, or about what amount?

A. I cannot say.

Q. Did you buy as high an amount on credit between those dates as $10,000?

A. I should think not, but I cannot say, certain.

Q. Give us the best judgment you can after the amount of your purchases between those dates.

A. It is impossible for me to arrive at a conclusion in regard to the amounts purchased between those dates.

Q. You generally purchased largely in the spring of the year, did you not?

A. Generally larger than in the winter, but not so large as in the fall, I should think.

Q. Were your purchases in the spring of 1868 larger or smaller than your purchases in 1866 & 1867?

A. I cannot say, certainly, but it is my impression they were smaller.

Q. Did you reduce your indebtedness any considerable amount from December, 1867, to July, 1868?

207 A. As I have just thought of the fact that I sold my stoves and tin-ware between those dates, I should presume I did.

Q. The selling off the stoves department of your business did not cancel your indebtedness to an amount greater than you received on that sale, did it?

A. I do not now think that it did.

Q. Now, is it not the fact that, so far from your indebtedness having decreased during that period of time, it had really increased?

A. It is impossible for me to say.

Q. You were engaged after May, 1868, in building your new store, were you not?

A. The store was being built at that time.

Q Was it not taking, to carry on the building of that store, quite a large amount of money out of your business?

A. Not just at that time.

Q. At the time that you commenced the erection of that store-building, were you not indebted to the amount of from twelve to fifteen thousand dollars?

A. I should think that I was.

Q. State now the conversation that took place between you and your father-in-law, Mr. Hayner, at the time you first spoke to him about loaning you the $3,000.

A. As near as I can recollect, I said to my father-in-law that I would like to build a new brick store, and would like to have him loan me $3,000 for that purpose, and would also like to have him go to Brodhead and superintend the building of it for me, and that, if he would do so, I would pay him ten per cent. interest, and give him a mortgage on the store, and insure it for his benefit, so that even in case of

208 fire, which I considered the greatest calamity that could befal' me, or something to that effect, he would be safe. I cannot give his exact language. I think he replied, he wanted a little time to think of it, as it was a new thing to him, but the result was, he consented to the proposition, and did comply with it.

Q. Did you at that time render any statement to him of your pecuniary condition?

A. I did not. I don't recollect of it.

Q. Did he at that time ask anything in relation to your pecuniary condition?

A. He did not, to the best of my recollection.

Q. Why did you make the promise to him at that time that you would give him a mortgage of $3,000, and insure the property for his benefit?

A. The principal reason, according to the best of my present recollection in my own mind, was, so that he should be safe in case of my being burned out.

Q. Did you at that time suppose or believe that the giving of $3,000 mortgage upon the store, when completed, would in any way impair your credit as a merchant?

A. My impression then was that my credit would be better in a brick store, even with a $3,000 mortgage on it, with my stock even insured, than it would be in a wooden row with a little or no insurance.

Q. Then why did you not execute that mortgage, and take out policies of insurance, as soon as the store was completed?

A. I did offer to do so, but for some reason my father-in-law was not ready to receive the mortgage.

209 Q. Did you have any insurance upon that stock of goods for the benefit of your father-in-law from the time you went into the new store till the latter part of August, 1869, when the mortgage was executed?

A. I did not.

Q. What did your father-in-law say when you offered, as you say you did, to give him a mortgage and policy of insurance, according to your alle*d*ged agreement?

A. I think he said, No matter about it just now. I don't know exactly how I want*ed* it. Let it remain just as it is for the present. I can't give his exact language. I think he said he would see to it, or attend to it, before he went away—meaning before he went to Woodstock, I suppose.

Q. And he did go away without attending to it, did he?

A. Yes, sir. When he came up to move his family to Woodstock I again spoke to him about it. He replied that he was very busy moving, & hadn't much time to spare, and would let me know when he wanted it, or something to that effect.

A. You were the party, then, that was pressing him to take the security?

A. I did not mean to press him, but I wanted him to know that I was ready & willing to do as I had agreed.

Q. Well, you would have been perfectly willing to have executed the mortgage if he would have accepted it, would you?

A. Yes, sir.

Q. You did not think, then, that the execution of that $3,000 mortgage would have in any way affected your credit as a merchant?

A. I did think at that time that it might, but I had agreed to give it, and I was ready and willing to give it.

210 Q. You was perfectly willing, then, at that time, if you could have induced your father-in-law to have accepted the mortgage, to have executed it, no matter how it might have affected your credit as a merchant?

A. I did not use any language of inducement. I merely reminded him that I was ready and willing to do *so* I had agreed to do.

Q. Was you at Woodstock at any time after your father-in-law moved his family there till August, 1869?

A. No, sir.

Q. Was anything said or written by you or your father-in-law about executing the mortgage till you was there in August, in 1869?

A. Not to my recollection.

Q. Had your father-in-law in the mean time, that is, between the date of the completion of the store and your going to Woodstock in August, 1869, endorsed, at your request, any and what amount of paper for you?

A. He had endorsed, but I do not know what amount.

Q. State the amount as near as you can.

A. I cannot state the amount. He endorsed two or three times bank notes, but I do not recollect the amount. It might have been more than two or three times.

Q. Was he liable at that time, August, 1869, on any and what amount of your paper as indorser?

A. Yes, on $1,500 that I know of now.

Q. For what purpose was that indebtedness incurred by you?

A. I suppose the money was obtained to use in my business. I don't remember any particular use that it was put to.

211 Q. Did you borrow it to pay your debts with?

A. I do not recollect that I did specially.

Q. Did you use the money that was raised on those notes?

A. I did.

Q. When was that $1,500 borrowed?

A. I cannot give you dates.

Q. Have you paid the $1,500, or any part of it?

A. No, sir; with the exception of some interest.

Q. Was that money borrowed at the bank?

A. No, sir.

Q. Where from?

A. $1,000 from Mrs. Balis, through her husband—Mrs. Balis, at Spring Valley; $500 from Mrs. Kurtz, through an agent or business-man, Mr. Hurlburt.

Q. Was your father-in-law indorser on any note to the First National Bank in August, 1869?

A. I cannot say whether he was in August or not. He was at the time of the failure.

Q. Was that in addition to the $1,500 you have spoken of?

A. Yes, sir.

Q. Is the paper now shown you the first circular which you made out of your indebtedness, and is it the circular referred to by you in a former part of this cross-examination?

A. Yes, sir; the printed circular that I referred to. (Said circular offered in evidence by plaintiff, and marked Exhibit H.)

Q. In that printed circular I find an item as follows: "S. P. Hayner secured by endorsement, $1,000." What does that, then, mean?

A. That means that I owed S. P. Hayner $1,000, for which he had my note without endorsement. It is a mistake in the printing

212 in so far as it says, "secured by indorsement." The amount of the debt is correct.

Q. When was that $1,000 of indebtedness contracted?

A. I couldn't tell you the exact time. It was contracted at different times for, perhaps, two years, and at final settlement I gave him my note.

Q. What relation, if any, was S. P. Hayner to you?

A. He is my wife's brother.

Q. When did you have the settlement with him?

A. I think those notes were given in the forepart of the year 1869?
Q. Prior to August?
A. Yes, sir.
Q. What amount of interest was you paying in the year 1869?
A. I do not know.
Q. Did you' interest-account run as high that year as $2,000?
A. I do not know.
Q. How was trade in 1869, in your line, at Brodhead, as compared with the previous years, 1867 & 1868?
A. It was not so good, in my opinion.
Q. Were your store expenses, in 1869, after you went into the new store, larger than before?
A. I think not.
Q. About the same?
A. Not as great.
Q. Were your collections as good in 1869 as 1868?
A. No, sir; think not.
Q. Was there any depreciation in your stock in 1869?
A. I think there was some in value?
Q. Was you troubled during the year 1869 to meet your paper promptly at maturity?
213 A. Yes, sir; in the latter part of the year.
Q. Was your borrowing all the time, in 1869, from various parties?
A. I don't think I was all the time.
Q. Was you not borrowing, more or less, in the year 1869?
A. Yes.
Q. Is it not true that your interest-account, in 1869, was very large?
A. I know that it was.
Q. How & in what way, or through what agency, did creditors collect, or attempt to collect, their indebtedness against you in the year 1869?
A. Sometimes I remitted them a draft by mail; sometimes sent them money by express; sometimes they drew on me through the express company or bank. Before there was a bank there the business was done through the express company.
Q. When was a bank opened at Brodhead?
A. I think in the summer of 1869. I cannot give the exact time.
Q. Who were the proprietors of that bank, and what was the name of the bank?
A. I understood that Bourn & Co. owned the bank, and it was called Bourn & Co.'s Bank of Brodhead. There was only one bank in Brodhead.
Q. Did the express company have in its hands, in 1869, a large amount of claims for collection, which were due and unpaid?
They had some. I don't know what amount.
Q. After Bourn & Co.'s established their bank at Brodhead, did you do business with them?
A. Yes, sir.
Q. Did you deposit with them any notes or accounts as collateral security to any indebtedness you owed them?
A. No, sir; I think not; but I may be mistaken.
214 Q. Did that bank hold any notes of yours?
A. Yes, sir; they held a number that I left there for collection?
Q. To what amount?

A. There might have been twelve or fourteen hundred dollars. I don't recollect the exact amount.

Q. Did a man by the name of Moore give any note or endorse any note for you at that bank?

A. He signed a note with me for $1,000 at that bank.

Q. Was that to raise money for you?

A. Yes, sir.

Q. When was that note given?

A. It was in the latter part of the summer or early part of the fall of 1869. I do not know but it was given in August, 1869.

Q. Did not you serve that note at the bank shortly before going to your father-in-law's in August, 1869?

A. No, sir; I do not think it was given at that time.

Q. Did you borrow from John Taylor, your clerk, $500, or thereabouts?

A. Yes, sir.

Q. Did you give him a note for it?

A. Yes, sir.

Q. When or about when did you borrow that money?

A. It was probably in June, 1869. I am not certain as to the date.

Q. Was you owing anything in June, 1869, for the store building, or on account of the store building?

A. Yes, sir.

215 Q. How much besides what you owed your in-law?

A. I think about $350; I don't know the exact amount.

Q. Who was you owing it to?

A. James Cutten, of Edgerton, about $300, and a man at Waukesha, for store, something; I also owed my father-in-law.

Q. Then all the indebtedness you owed in 1869, after the completion of the store, aside from the $350, was either for borrowed money or for goods & merchandise purchased on credit; is that so?

A. Yes, sir; except two or three hundred dollars of my brother-in-law's debt, which was for real estate.

Q. Now, of the indebtedness which you owed on the first day of August, 1869, what proportion, in your opinion, was then past due?

A. I could not form an opinion as to the amount.

Q. Was there as much as $15,000 then past due?

A. I could not say.

Q. Will you say that it was any less than $15,000 that was then past due?

A. No, sir; I do not know.

Q. How soon after you had turned out to Pierce & Whaling the note of Spaulding & Brown was it that Wager & Fales, through their agent, Mr. Johnson, solicited a mortgage from you to secure their debt.

A. I do not know whether it was after or before.

Q. Was not the asking by Wager & Fales for that mortgage, and the demand of Pierce & Whaling for security for their debt, and the pressure of other creditors upon you, the occasion, in part, of

216 your visit to Woodstock at the time you went there in August, 1869?

A. No, sir; it had nothing to do with it whatever in any way, shape, or form.

Q. You have stated in the course of this examination that you had had no communication with your father-in-law in relation to the mortgage from the time he left Brodhead with his family till your visit in August, 1869, have you not?

A. I did state that I had no recollection of it.

Q. Why, then, did it happen that you went to see him just at the time that you did, in August, 1869?

A. I do not know of any particular reason why my visit took place just when it did. It may have been because business was dull, and I thought it a favorable time to make my usual summer visit there.

Q. You wanted him to have the first morgage on the store, did you not?

A. I suppose I did, because I had agreed to give it to him.

Q. You was determined, as against any other creditors of yours, that he should have the first mortgage on that store, were you not?

A. No, sir; I had no such determination that I recollect of?

Q. Was there any good reason why you should have refused to give Wager & Fales a mortgage, as they requested, at the time they made the request?

A. Yes, sir; I thought there was, and I gave them that reason.

Q. What was that reason?

A. That I hoped to be able to pay them that fall, instead giv-
217 ing them a mortgage.

Q. Was not their debt older than your father-in-law's?

A. Yes, sir; I think most of it was.

Q. Didn't you think then that being an older debt *that* it ought to have been first paid in the natural order of things?

A. I don't think at that time I thought of it in comparison with my father-in-law's debts as to which should be paid first.

Q. Wager & Fales were willing, were they not, to give you almost any time you required on condition that you would secure their debt?

A. They seemed to be willing to give any reasonable length of time.

Q. Time for the payment at that time with you was of great *great* consequence, was it not?

A. I considered it an object.

Q. Was not their proposition, in case you gave them security, fair and just to you?

A. I certainly could find no fault with it.

Q. And yet you refused at that time to accept their fair offer and give the security?

A. I made them a different offer, which they accepted.

Q. At that time?

A. At the time Mr. Johnson saw me the second time, yes.

Q. What was that proposition?

A. It was to make them certain payments at certain times, which if I could not do I would give them security and take long time, or something to that effect.

Q. When and how was you to make those payments?

A. I do not recollect.

Q. And Wager & Fales accepted that proposition, did they, in
218 lieu of their taking security for their debt?

A. They give me time to try my plan.

Q. By letter?

A. I think they did, or through Mr. Richardson.

Q. Did you make them any payments under that arrangement?

A. I am not now certain whether I did or not. I know I was not able to make them as I had suggested.

Q. Did you write them to that effect?

A. I do not recollect that I did; perhaps I might.

Q. Have you not already stated in the course of your examination

that you did write to them that collections were slower than you anticipated, and that you could not remit them, or words of that effect?

A. I think I stated that I wrote them such letters at some time, but I don't think I wrote them anything in regard to the mortgage.

(Witness here desires to state that after looking over the preceeding page of his testimony that he misunderstood the question "Did you write them to that effect?")

Q. Did you give any reason to Mr. Johnson why you did not want to execute that mortgage at that time?

A. Yes, I think I did.

Q. What reason did you give him for not wanting to execute the mortgage at that time?

219 A. I think I told him that I thought it might injure my credit, and that I could make the payments very soon, so that it would be satisfactory to the firm without a mortgage.

Q. Did you give to Mr. Johnson, as a reason for not executing that mortgage at that time, that you wanted to consult with your friends?

A. I might have said something to that effect. I don't remember anything of the kind now, only that I said I should like to consult Mr. Richardson. I remember that.

Q. In the deposition of Mr. Johnson, taken in this cause, I find the following, "And another reason why for not consum'ating that mortgage, he wanted to consult his friends." Is that statement true or false?

A. I presume it is true, although I have no recollection of saying so.

Q. Why did you want to consult with your friends about consum'ating that mortgage?

A. I have no recollection of wanting to consult with any one but R. J. Richardson, whom I knew to be a friend of Wager and Fales, and I wanted to use his influence with them to give me time to pay without giving a mortgage.

Q. Did you at that time report to Mr. Johnson that you was stronger by several thousand dollars than you were in 1868?

A. I don't think I did that. I was several thousand dollars stronger than one year previous.

Q. Did you state to Mr. Richardson in July, '69, the amount of your indebtedness?

A. I do not recollect doing so; perhaps I might.

Q. Did you pay anything on the debt of Wager & Fales in the year 1869; and if so, how much?

220 A. I see, by referring to the book, that I paid them $200 in June, '69.

Q. Any after that?

A. I can't say.

Q. When did you next hear anything about giving a mortgage to Wager & Fales to secure their debt?

A. I cannot tell; it might have been in Nov. of the same year.

Q. Did you receive any letters from Wager & Fales in the year 1869, asking you for payment of your indebtedness to them?

A. I think perhaps I did. I don't remember distinctly.

Q. How many letters did you write them in relation to your indebtedness in the year 1869?

A. I cannot say.

Q. Give us some idea. Was you writing every week or month, or how?

A. I was not writing every week nor every month. I cannot say how many times I did write them.

Q. Was it several times? You can answer that, can't you? Was five or ten or more?

A. It seems to me now that I did not write them more than two or three , but I am not positive.

Adjourned to 2 p. m.

At 2 p. m. parties appeared, and the cross-examination of Leonard Lakin being continued, testified as follows:

Q. Since the adjournment have you been to the bank and ascertained the date of the note of which your father-in-law is endorser? If you , give the date and when payable.

A. It was dated Nov. 29, 1869, and was paid by my father-in-
221 law Feb'y 4, 1870, so I learned at the bank.

Q. Was that note given in renewal of any other note given at that bank?

A. Yes, sir; part renewal.

Q. Was the previous note endorsed by R. J. Richardson?

A. I cannot say.

Q. Was R. J. Richardson at any time in 1869 an indorser to any extent whatever for you?

A. Yes, sir; I think he was.

Q. To what extent did he indorse for you in 1869?

A. I cannot tell the amount of paper he endorsed.

Q. Where did you use the paper that he endorsed?

A. At the 1st National Bank of Janesville.

Q. Was he an indorser on any paper used in that bank in 1869 to the amount of $1,000?

A. I think he was.

Q. When how was that paper paid on which he was indorser?

A. I could not say when. I don't remember. I don't know how it was paid, but I think that all the notes I drew as payable at the bank were running to my father-in-law, with one or two exceptions, and he stood as first indorser, and, I think, that either Williston or R. J. Richardson stood as second indorser.

Q. About what line of discount did you have at that bank during the year 1869?

A. I cannot tell exactly, but, I think, during 1869 from one to two thousand dollars.

Q. How often were you obliged to renew your notes at the bank?

222 A. They were generally discounted for 60 or 90 days.

Q. Was you in the habit, after your father-in-law went into business at Woodstock, Ill., of sending notes to him to sign as indorser for you?

A. I did do so.

Q. How many, or about how many, notes was he indorser on for you at or about the time you executed the mortgage to him?

A. I think three; it might have been four.

Q. Amounting in the aggregate to how much?

A. Perhaps twenty or twenty-five hundred dollars.

Q. What security, if any, had your father-in-law for his indorsements?

A. He had none.

Q. Was you an indorser upon any paper for your father-in-law in the year 1869?

A. No, sir; I think not.

Q. Did you indorse for your father-in-law at any time, and if so, when?

A. Yes, sir; I indorsed one note for him once. I don't recollect but one, and I think that was in 1868. It was for six or seven hundred dollars.

Q. Was your father-in-law, to your knowledge, in need of any money to carry on his business in August, 1869?

A. He told me that he would like more money in his business?

Q. When did he tell you that?

A. Just as I was leaving Woodstock, I think, in August, 1869.

Q. Did you offer at that time to raise any money for him?

A. No, sir; not to my recollection.

223 Q. Did you at that time offer to execute to him a mortgage to secure his account against you?

A. No, sir.

Q. You said nothing about the mortgage to him?

A. No, sir; not till he said to me that he would like it.

Q. Did he say anything to you in that conversation for what purpose he wanted the mortgage at that time?

A. Yes, sir; he said something about what he wanted it for.

Q. What did he state he wanted the mortgage for?

A. I don't know that I can give his exact language, but I had the impression that he wanted to increase his stock of lumber at that time, or in some way use it in his lumber-business.

Q. And to do that he needed money, did he?

A. Well, I supposed he did from what he said.

Q. Did he at that time ask you to raise him any money?

A. No, sir.

Q. What means had your father-in-law at that time to carry on business?

A. I do not know.

Q. Was he at that time a man of large or small means?

A. I should say, comparatively speaking, of small means.

Q. How long was you with him in Woodstock?

A. I think I was with him three or four days at that time; I might have been longer.

Q. You went down simply to visit, did you?

A. Yes, sir.

224 Q. Now, was nothing said between you and your father-in-law during all the time you was there in relation to your indebtedness to him until just as you were going to the cars to leave?

A. No, sir; not a word that I recollect of.

Q. And you did not know then, until just as you were leaving, that your father-in-law wanted any money or any security?

A. No, sir; not at that time.

Q. All that was said about the security at that time was the few remarks made, while you were going to the cars, was it?

A. Yes, sir.

Q. Did he, during the few days that you were visiting with him, ask you anything about your business?

A. I do not recollect that he did.

Q. Didn't he ask you anything about your being able to meet the $2,500, or any portion of it, on which he was liable as an indorser?

A. No, sir.

Q. He made no inquiries, then, of any kind of you about your business at that time?

A. I do not recollect that he did.

Q. You knew then, did you not, that your creditors, or some of them, had been pressing you for payment or security?

A. I knew that they had asked for it. I did not consider then that they had pressed me.

Q. You knew also, did you not, that you had debts matured or maturing which, in your then circumstances, you could not pay?

225 A. No, sir; I expected to pay every debt I owed.

Q. You knew that you were owing Wager and Fales $3,000 long past due, & on which they had asked security, did you not?

A. Yes, sir.

Q. And you knew there was other indebtedness which you owed then past due, did you not?

A. I think I did.

Q. And did you conceal that information from your father-in-law?

A. I should not if he had asked me about it; I did not, I suppose, see any necessity of telling him about it.

Q. Did not you think it would be important for him to know (being at that time, as he was, an indorser to the amount of $2,500 or more without security,) your condition?

A. I did not.

Q. Did you think it would be better for you to conceal the true facts of the case from him under such circumstances?

A. I do not recollect that I thought anything of the kind.

Q. Of the $2,500 on which your father-in-law was then endorser, was any part of it then past due?

A. Yes, sir; I think there was.

Q. How much of it?

A. I know positively of only $1,000 which was due to Mrs. Balis.

Q. Your father-in-law knew that that was past due, did he not?

A. Yes, sir.

Q. How long had that paper been past due at that time?

A. Three or four months, I think.

227 Q. Why had not you paid it?

A. When it was due, the parties did not want it. They merely wanted the interest, and said I could keep it longer. I consequently did not pay it.

Q. Now do you say that during all that time you was at Woodstock not a single word passed between you and your father-in-law about that past-due paper?

A. Not a single word, to my recollection.

Q. When or about when was the balance of the paper upon which your father-in-law was an endorser due?

A. I do not know.

Q. Now you say, if I understand you, and—*and* am I correct in it—that, although there was this note of $1,000 past due, and had been for some time, and, although your father-in-law was an indorser on $1,500 more, he never asked you a question in relation to your business & you told him nothing in relation to your business prior to the execution of the mortgage while at Woodstock?

A. I do.

Q. Was your condition in November, 1869, better pecuniarily than in August, 1869?

A. I don't know that there was much difference, to look back now.

Q. Had you paid off any considerable amount of your indebtedness between Aug. and the latter part of November, 1869?

A. To the best of my recollection, I had paid off considerable indebtedness, and made some. I think I had paid some more that I had made.

Q. What amount of indebtedness, or about what amount, did
228 you owe in November, 1869, which was then past due?

A. I cannot tell the exact amount from my present knowledge. I should think twelve or fifteen thousand dollars—more, perhaps.

Q. Did you make any representations to Mr. Richardson at the time he took the mortgage to Wager & Fales?

A. I think I did.

Q. What did you represent to him at that time?

A. If I represented anything I told him I considered myself worth twelve or fifteen thousand dollars above my indebtedness—that I owed about twelve or fifteen thousand dollars.

Q. Did you state to Mr. Richardson in what your property consisted?

A. I think I did, but am not certain.

Q. Mr. Richardson is an old merchant in Rock County, is he not?

A. He was a number of years ago.

Q. Did he go through your stock in Brodhead prior to taking the mortgage?

A. I think not; think not at Brodhead, then.

Q. He was quite familiar, was he not, with your business?

A. I do not recollect seeing Mr. Richardson in Brodhead but once prior to taking the mortgage, and that was three or four years before.

Q. Did Mr. Richardson ask you anything about the title to the property on which he was taking the mortgage?

A. I think he did, but I am not positive.

Q. Did you tell him there was a prior mortgage on the property to Mr. Hayner?

A. Yes, sir; I think I did.

229 Q. What, at the date of the giving of the mortgage to Wager & Fales, was the market value of the real estate described in that mortgage aside from that on which the store stood?

A. I wanted to sell the property, and I then asked $3,000 for it, but I did not sell, and therefore think it would not bring that price at that time. There was no building improvement on that real estate.

Q. When was the bargain made between you and Mr. Richardson for the giving of that mortgage?

A. I think it was in Janesville, the county seat of Rock County, and Brodhead is in Green County.. The county seat of Green County is at Monroe, and there is a line of railroad extending from Janesville to Brodhead, and Monroe is about fifteen miles west of Brodhead, and Janesville about twenty miles east of Brodhead.

Re-direct:

Q. How does your condition, financially, during the years 1868 & 1869—you now look back upon them after having fully investigated your condition preparatory to making your schedules in bankruptcy, under oath—compare with your financial condition as it appeared to you during those years?

A. It appears fully twice as bad to me now as it did then.

Q. Did you absolutely refuse to give Johnson a mortgage when he

was here in the summer of 1869; and did he absolutely require or insist upon your then giving him a mortgage?

A. I should say not absolutely to either part of the question.

230 Q. Did you mean to say yesterday in your testimony that you was certain that you did not tell Johnson that your property would bring $15,000, above your indebtedness if sold under the hammer, or that you were certain that you had no recollection of making such statement?

A. I meant to say I was certain of having no recollection of making said statement. I think that is the way Mr. Finch put the question. I certainly have no such recollection.

Q. When you say that you wont swear less than $15,000 of your indebtedness, as it existed in June, 1869, was then past due, do you make that statement from your present knowledge of what your condition then was, or from what you then, in June, 1869, supposed the amount of your indebtedness, then past due, was?

A. I mean to say that I do not now know what amount of the indebtedness was past due in June, 1869, and by saying that I would not swear that less than $15,000 was past due; I mean to say that I do not know whether less or more than $15,000 was past due at that time.

Q. State in what condition your homestead was when you failed, when you bought it, and what you paid for it.

A. I am not positive when I bought it, but I think in the spring of 1867. I agreed to pay $1,500.00, and ten per cent. interest on the unpaid portion, and at the time of my failure I owed $700 of the principal & a small amount of interest. I do not recollect the amount of interest.

231 Q. How did you come to borrow this $1,000 of Mrs. Balis?

A. Mr. Balis called after me one day on the street, and came to me and asked me if he could not lend me some money. I asked him what amount he had to lend, and he said $3,000. I told him that I thought I could use $1,000 of it to advantage, and he said he would make the arrangement to let me have it. I think that was in May, 1868. Mr. Balis resided in the town of Spring Valley, about four miles from Brodhead. He did his trading in Brodhead mostly.

Q. Was he there frequently prior to that time?

A. Yes, sir; I saw him there quite often.

Q. State how you came to *loan* this $500 of Mrs. Kartz.

A. Mr. Kartz, when alive, was a dry-goods merchant in Brodhead. I bought out at one time what hardware the different merchants of Brodhead , and among the rest bought out Mr. Kartz, for which I gave him a note, if I remember right, and running one year without interest. Before that note became due Mr. Kartz died, and Mr. Hurlburt, who, I think was administrator, came to me and said that they did not want that money, but wanted to have it drawing interest, and would like to put enough with it to make it $500 and let it run.

Q. When was that transaction with Mr. Kartz?

A. I think it was in the fall of 1867. I may be mistaken.

Q. How long had he resided in Brodhead at that time?

A. I should think about two years.

232 Q. About how *long* such was the first note given for in the transaction with Kartz?

A. I do not recollect; but I think between one and two hundred dollars.

Q. Was there any security or indorser on the first note?

A. No, sir.

Q. About when did this arrangement with Hurlburt take place?
A. I think in the fall of 1868; I am not sure.
Q. Where did Hurlburt reside at the time?
A. He resided in Brodhead.
Q. How long had he resided there?
A. I think he had resided in the village about two years.
Q. When was the $500 note to Mrs. Kartz payable?
A. My impression is that it was one year from date.
Q. Did you keep any seperate interest-account during the year 1868 & 1869, or either?
A. No, sir.
Q. Did you know, prior to your failure, where near the amount of interest you were paying 1868 & 1869—that is, did you in any way keep an account of it, so you could tell?
A. No, sir.
Q. Did you have any drafts or notes protested in 1869 at any bank in Janesville or Brodhead, or by the express company, or by any other party, or at any other place, except the one note you have mentioned by the First National Bank in 1869?
A. Not that I recollect of.
Q. Had you previously to 1869?
A. No, sir; never to my recollection.
233 Q. Were you ever sued for any indebtedness during 1868 or 1869?
A. No, sir; with one exception, the Congregational minister in Brodhead had me sued on three small orders, amounting to between $50 & $60, which I claimed I did not owe, and which I did not owe.
Q. You commenced during the cross-examination to state a conversation in regard to your financial condition between yourself and Mr. Morse in November or December, 1869, and started to say something more when Mr. Finch stopped you. Will you state what that conversation was?
A. I commenced to give the reason why we had any talk about my financial condition. If I recollect right, Mr. Morse talked of buying out Spaulding & Brown, and proposed to me, or rather asked me, if, in case he should do so, if I would not buy half of that stock if he would buy half of mine, and we would then run the hardware business in company; & during the talking up of that matter he asked me how much I owed, and I told him in a few minuits about how much I owed. He did not buy out Spaulding & Brown at that time, and there was no agreement made between us.
Q. Did you, in that statement to Morse, examine the books to ascertain the amount of your indebtedness?
A. No, sir.
Q. Did you undertake or claim to him that you was giving a definite and accurate statement?
A. No, sir; I only claimed to give him about the amounts as I supposed.
234 Q. Who spoke first about the matter; you or he?
A. Either he or his son-in-law, Mr. Brown, spoke first about it.
Q. Did you in any way urge the completion of such an agreement?
A. No, sir.
Q. Did you express any desire to make such an arrangement?
A. I do not know that I did, more than, perhaps, to say that such an arrangement could be made.
Q. Did you, during the year 1869, at any time up to the time of

your failure, know anywhere near the amount of your actual indebtedness you found it on investigation?

A. No, sir.

Q. At the time of taking your account of stock, December 17th, 1869, did you undertake at all to investigate the account of your indebtedness?

A. I did not.

Q. You may state, Mr. Lakin, as you have examined the statements you made at the time of your failure, what those statements were, and the time intervening between the making of those statements.

A. The first statement I gave to Mr. A. O. Hall I do not remember the exact amount of; but I think it was about $23,000. Mr. Hall and myself arrived at those figures from memory and from searching the books, which occupied nearly one day, I think. That statement was not printed. Some three or four days after that I made the printed statement, bearing date Janu'y 1st, 1870, which is in the evidence,
235 and the am't of that is $26,447.73. That amount was arrived at by using a copy of the statement made for Mr. Hall and from further recollection, and I think from statements received by mail from some parties. I think the statement I made to Mr. Hall was the 27 or 28 of December. The statement which is my schedule in bankruptcy was made up by aid of the printed statement and by writing to some parties whose accounts I did not know the amount of, and by every other means we could use to get a correct statement, which was done about a week's time after January 1, 1870. That statement I then swore to, believing it to be as near correct as I could get it, and filed it in the office of the clerk of the U. S. court at Milwaukee, and from which the marshal, as I believe, took a correct copy and sent to the creditors, one of which I now have before me, and is dated February 2, 1870, and the liabilities as therein stated amount to $28,450.12, which is about, as I recollect, the amount. (Said statement is offered in evidence by the defendant, and marked Exhibit I 2.)

Q. Were you in the habit, in 1867, 8, & 9, of frequently seeing R. J. Richardson in Janesville?

A. Yes, sir.

Q. Were you in the habit of frequently talking of your business to him?

A. Yes, sir; never to have any long conversations about business.

Q. Do you claim to recollect everything that ever passed between you & Mr. Richardson about property, business, and your business?

A. No, sir.

236 Q. Do you claim to recollect everything that passed between you & Johnson about this indebtedness, & that you can't be mistaken about it?

A. No, sir; I do not.

Q. Was there any time in 1867, 1868, or 1869, that you had any difficulty in obtaining all the goods you desired to purchase on credit without security?

A. No, sir.

Q. Did you, during 1869, at any time refuse to purchase on credit when urged to do so?

A. Yes, sir; a number of times.

Re-cross-examination:

Q. Is it not the fact that you did, in 1869, make applications to some of your old creditors to purchase on credit and they refused it?

A. I do not recollect of but one such an occurrence.

Q. Who was it?

A. Peirce & Whaling..

Q. Did not a firm in Chicago refuse you credit that year?

A. I do not recollect that they did.

Q. Did not the firm of William Blair & Co., of Chicago, refuse you credit?

A. They did at one time, but that was not in 1869, I think, and I never traded with them any before or since but very little. I replied to them that I could get all the goods I wanted of other houses on credit, and that I only applied to them because I thought they were the only house that *the make or brand* of planes which I wanted.

237 Re-direct:

Q. Is there anything about that matter of Pierce & Whaling's which you want to state?

A. I merely want to say that when Mr. Arnold, Messrs. Pierce & Whaling's agent, came to Brodhead and obtained Spaulding & Brown's note, he said to me, "Mr. Lakin, I don't want you to think we are afraid of you, or that we want security, but the way we do business we must have something to put in the place of money," insinuating to me that they sold goods for other parties, and must either have the goods or something to show for it.

Q. Is there anything about your being treasurer of the church, or about the school matter, or about money you had of produce dealers that you desire to explain more than you have? If so, do it.

A. No, sir; I think the testimony already given clears me from all charges of defalcation or dishonesty in those matters.

Re-cross:

Q. Did the firm of Nazro & Co., to your knowledge, know of your indebtedness to your father-in-law, or Wager & Fales, at any of the times when you made payments to them in 1869?

A. They did not, to my knowledge.

LEONARD LAKIN.

At six o'clock, p. m. adjourned indefinitely, the time for meeting to be agreed upon by counsel.

238

239 EXHIBIT B 2.

Rec'd, Brodhead, May 27, 1869, of L. Lakin, late school district tr. the sum of eleven hundred thirty-six $\frac{52}{100}$ dollars, funds reported by him remaining in his hands as such treasurer belonging to Brodhead school-district.

H. B. STEWART,
Dist. Treasurer.

EXHIBIT C 2.

BRODHEAD, *Wis., May* 22, '69.

Rec'd of L. Lakin, as treasurer of Brodhead school-district, bonds, coupons, orders, & accrued interest on bonds to the amount of thirty-six hundred and sixty-two and $\frac{1}{100}$ dollars as paid by him as treasurer of said Brodhead school-district.

H. B. STEWART, *Treasurer.*

EXHIBIT D 2.

Proceedings of the Board of Education.

MAY 17, 1869.

The board met pursuant to call of president, at the office of Dr. Towne, May 17, 1869, at 7 o'clock, p. m. Present, all the members.

The bond of L. Lakin was approved.

L. Lakin tendered his resignation of the office of treasurer.

The board accepted his resignation and proceeded to ballot for treasurer to fill vacancy, which resulted in the election of H. B. Stewart.

The following resolution was unanimously adopted:

Resolved, That the thanks of the board are hereby tendered to L. Lakin, esq., for the honest discharge of the duties of his
240 office as treasurer of the Brodhead school-district, for the past two years, and we hereby assure him that no act of his as such treasurer has tended in any manner to impair the confidence of the board in his integrity of purpose, but on the other hand that the correct rendering of his account for the large amount of funds that have passed into his hands give ample assurance of his trustworthiness.

The board ordered the proceedings of this meeting published, and adjourned.

B. SPRGUE, *Clerk.*

EXHIBIT E 2.

Messrs EDITORS: Allow me to state that the settlement between Messrs. Lakin and W. H. *Stewart* is perfectly satisfactory to the parties and develops no foundation to the absurd rumors in circulation in regard to Mr. Lakin's credit.

I say this from a personal knowledge of the facts.

C. SEEBER.

BRODHEAD, *Dec.* 17, 1868.

EXHIBIT F 2.

BRODHEAD, *December* 24, 1863.

Rec'd of Leonard Lakin his note for 96.47 dollars in full for settlement of all accounts to date, including the ac. of Spaulding & Brown.

CHRISTOPHER SEEBER,
for W. H. STRAUSER.

EXHIBIT G 2.

241 *Brodhead Presbyterian Church*

DR.

Cash paid out for building church as follows:

For lot, taxes, deed, &c	$431 55	
Stone	137 00	
Lime	118 60	*117 35
Mason work	661 91	*604 59

*In pencil.

Windows	354 02		
Fr't on same	9 90		
To Smith, Moise & Co., for lumber	708 54	*608	52
For sundry bills at Oshkosh	363 33	*346	83
Fr't on same	82 80		
To C. B. Peck, for brick	400 00		
Fr't on same	104 00	*130	80
" Chas. Heath, for carpenter work	11 25		
" Mr. Davis	68 75		
" H. A. Lewis	89 25		
" J. M. Lewis	12 25		
" I. P. Laird	20 00		
" I. Whitchell	61 15		
" A. Kingman	127 18		
" L. Wooster	15 00		
" H. Castle	24 33		
" I. Fray	1 00		
" I. Philbrick	8 13	*72	
" C. H. Cottle	50 50	*114	
" Wooster & Woodward	14 00	*137	
" I. Vanmess	91 50	*93	
" Well pump for well	12 00		
" S. Baldwin, dig'ing	8 65		
" Door-frame	2 90		
" Coochy, for work	5 00		
" Atherton	28 75		
Am't carried over	4,037 42		
242 Am't bro't over	$4,037 42		
Paid Geo. Welliston, for work	11 00		
" Geo. Perry " lathing	34 94		
" E. A. Adams " work	9 00		
" Sundry bills of fr't	9 22		
" George Taylor, for work	18 50		
" L. Lakin, furnace & stove	216 22	*213	12
" J. M. Hume, for seats	458 00		
" L. Lakin, hardware	166 84	*240	40
" Sundry bills, for hauling	78 75	*69	05
" I. Nauscousur & Son	5 85		
" E. Spafford for work	3 25		
" Discount & interest at bank	29 50		*52
" For wood to heat house	46 00	*72	25
" Rob't Tayler, for interest	25 99		*52
" Sundry items of "	5 45		*76
			*111
" I. A. Staley, for work	25 00		*50
1869, Feb'y 15. Bal to new ac	420 69		*16
	$5,601 62	5,601	62

* In pencil.

Brodhead Presbyterian Church.

Dr.				
Feb'y 13,	to paid for this book	2 50		
" 24, "	" R. Taylor endorsed on note given J. C. Moore	415 00		
Mc'h 9,	" " W'm B. Hume	19 58		
June 25,	" " d'ft sent W'm B. Hume	67 25		
July 19,	" 2d nails	12		
" 19,	" p'd T. D. Levril endorsed on note	60 00	564 45	
			547 31	
				17 14

243 *In ac. with treasury.*

Cash received on subscriptions for church-building, as follows:

Of Robert Taylor	384 49	
" Ja's Kirkpatrick	205 00	*230
" I. F. Mack & Mrs. Day	414 53	*402
" W'm Martin & family	428 00	*433
" L. Lakin	300 00	*360
" R. M. Lum & family	190 00	*170
" M. Harper " "	152 50	
" R. Harper	110 00	
" Archibald Smith	143 00	*133
" Walter Smith	130 00	
" Samuel McNair	115 00	
" W. W. Marlem & family	112 00	
" T. D. Laird	73 95	
" I. M. Martin	67 50	
" A. R. Day & wife	97 75	
" I. Bradshaw	60 00	*20
" T. Hendrie	60 00	
" B. Greever	60 00	*55
" I. I. Cook	60 00	
" Mrs. Jacob Ten Eyck	60 00	
" H. B. Stewart	50 00	
" H. D. Ewer	50 00	
" W. Whealon	50 00	
" A. Ten Eyck	40 00	
" I. Martin	30 00	
" T. Harper	25 00	
" R. Atchinson	25 00	
" T. E. Martin	25 00	
" Taylor & Mitchell	25 00	
" Ja's Oliver	25 00	
" Ja's H. Moore	25 00	
Carried over	$3,593 72	

*In pencil.

244	Am't bro't over	$3,593 72	
	Of John Taylor	30 00	
	" T. J. Mener	25 00	
	" William Taylor	25 00	
	" N. Hall	25 00	
	" George Spaulding	25 00	
	" Caleb Nanscousur	25 00	
	" R. C. Clawson	25 00	
	" Smith & Morse & Co	19 71	
	" I. A. Staley	25 00	
	" sundry small subscribers	24 07	
	" choice of pews on sale	26 50	
	" lime, brick, &c., sold	24 12	*26 74
	" church-extension fund	700 00	
	" stove-pipe returned	8 50	
	" note to Mrs. Laird M'ch 4, 1867	500 00	
	" I. C. Moore " "	500 00	
	1869.		5,601 62
	Feb'y 15.		
	By bal. ac	420 69	

In ac. with treasurer.

		CR.	
	By cash on treasury Feb'y 8, page 5	352 31	
	Feb'y 24, by cash of S. Rowe	50 00	
	" " " S. McNair	50 00	
	" " " L. Lakin	60 00	
	July 10 " cash Robert Taylor, to be endorsed		
	" 16 " " on note	10 00	
	" 16 " " James Kirkpatrick	10 00	
	" 24 " " William Marlow	10 00	
	" 28 " " Mrs. W'm Marlow	5 00	
			547 31

$352.31.] BRODHEAD, *May* 5, 1869.

The committee appointed by the chairman of the board of trustees of Presbyterian church and society to examine the accounts of the
245 treasurer from the commencement of the building of the church to the present time, having attended to that duty, beg leave to report that they have carefully examined said accounts as far forward as Feb'y 8th, 1869, and find at that time in the treasury three hundred and fifty-two & $\frac{31}{100}$ dollars.

(Signed) B. C. BRETT,
T. D. LAIRD,
Committee.

The above report was accepted and adopted by the board of trustees.

(Signed) B. C. BRETT, *Clerk.*
I. A. TAYLOR, *Ch'n pro tem.*

* In pencil.

EXHIBIT "A" 2.—*Mortgage.*

This indenture made this 27th day of Aug., in the year of our Lord one thousand eight hundred and sixty-nine, between Leonard Lakin and Orlina Lakin, his wife, of Brodhead, Green County, State of Wisconsin, of the first part, and Andrew P. Hayner, of Woodstock, McHenry Co., and State of Illinois, of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of three thousand two hundred and seventy-six $\frac{87}{100}$ dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said party of the second part, and to his heirs and assigns forever, all that certain piece or parcel or tract of land situate, lying, and being in the town of Brodhead, county of Green, and State of Wisconsin, and known and distinguished as the north one-third ($\frac{1}{3}$) of lot number one (1) in block one hundred and one, (101,) according to the plat of said
246 town of Brodhead as recorded in the office of the register of deeds of Green County.

[Am't of seal: $3.50. Canceled.]

To have and to hold the above-bargained premises to the said party of the second part, his heirs and assigns forever. *Provided, always*—and these presents are upon this express condition—That if the said Leonard Lakin, his heirs, executors, or assignes, shall well and truly pay, or cause to be paid, to the said party of the second part, his heirs, executors, or assigns, the sum of three thousand two hundred and seventy-six dollars & eighty-seven cents, with interest thereon annually, at the rate of ten per cent. per annum, according to the tenor of three certain notes, bearing even date herewith, executed by the said Leonard Lakin, party of the first part, to the said party of the second part, as collateral security; and shall pay all costs and expenses which the said party of the second part, his heirs, executors, administrators, or assignes may be put to incur or sustain, over and above the costs and fees which now are, or may hereafter be, allowed by law in collecting said notes or for'closing this mortgage, and any costs or expenses which the said party of the second part, his heirs or assigns, shall necessarily pay, be put to, or sustain in any suit commenced upon said notes, or said notes and mortgage, th'ough the sum of money then due and secured thereby, and to collect which said suit shall be brought, shall be paid be-
247 fore judgment or decree obtained in any such suit, and the sum of twenty-five dollars as attorney or solicitor's fees, in addition to the fees taxable by law, then these presents and the said notes shall cease, and will be null and void.

And the said Leonard Lakin do further covenant and agree to and with the said party of the second part, his heirs, executors, administrators, and assigns, to pay, or cause to be paid, said sum of money above specified, at the time and in the manner above-mentioned, together with all such costs, expenses, and attorneys' or solicitors' fees, if any there shall be, and that he will pay taxes and assessments of every nature that may be assessed on said premises, previous to the day appointed, in pursuance of any law of the State for sale of lands for taxes.

In witness whereof the said parties of the first part have hereunto set their hand and seals the day and year first above written.

LEONARD LAKIN. [SEAL.]
ORLINA LAKIN. [SEAL.]

Sealed and delivered in presence of—
CHRISTOPHER SEEBER.
JOHN TAYLOR.

STATE OF WISCONSIN,
County of Green, ss:

Be it remembered that, on the 27 day of August, A. D. 1869, personally came before me the above-named Leonard Lakin & Orlina A. Lakin, his wife, to me known to be the persons who executed the foregoing mortgage, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

CHRISTOPHER SEEBER,
Justice of the Peace.

248 1,287.87.] BRODHEAD, *August* 27, 1869.

On or before August 27, 1873, for value received, I promise to pay A. P. Hayner, or bearer, twelve hundred and seventy-six $\frac{87}{100}$ dollars, with interest, annually, at the rate of ten per cent. per annum until paid.

LEONARD LAKIN.

Secured by mortgage, and stamped $2.50 Gov. stamp.

$1,000.] BRODHEAD, *August* 27, 1871.

On or before August 27, 1871, for value received, I promise to pay A. P. Hayner, or bearer, one thousand dollars, with interest annually, at the rate of ten per cent. per annum until paid.

LEONARD LAKIN.

Secured by mortgage, and stamped $3.50 Government stamp.

$1,000.] BRODHEAD, *Aug.* 27, 1869.

On or before August 27th, 1872, for value received, I promise to pay A. P. Hayner, or bearer, one thousand dollars, with interest annually, at the rate of ten per cent. per annum until paid.

LEONARD LAKIN.

Secured by mortgage, and stamped $3.50 Government stamp.

249 EXHIBIT I 2.

U. S. MARSHAL'S OFFICE, DISTRICT OF WISCONSIN,
Milwaukee, Wis., Feb. 2d, 1870.

To Mr. , of county of , and State of , creditor of Leonard Lakin, bankrupt:

You are hereby notified that a warrant in bankruptcy has been issued out of the district court of the United States for the district of Wisconsin, against the estate of Leonard Lakin, adjudged a bankrupt upon his own petition; that the payment of any debts and the delivery of any property belonging to said bankrupt to him, or for his use, and the transfer of any property by him, are forbidden by law; that a meeting of the creditors of said bankrupt, to wit:

	Name.	Residence.	Amount.
	Green County and the village of Brodhead, "taxes"	Brodhead, Wis	$163 00
	Pocahontas County, "taxes"	Po'ahontas County, Iowa	14 67
	Peirce and Whaling	Milwaukee, Wis	1,800 09
	Wager and Fales	Troy, N. Y	3,100 00
	First National Bank of Janesville	Janesville, Wis	500 00
	Andrew P. Hayner	Woodstock, Ill	3,276 87
	Bowen and Co	Brodhead, Wis	1,000 00
	Mrs. H. M. Baillies	" "	1,000 00
	Mrs. Andrew Kurtz	" "	500 00
	Peirce and Whaling	Milwaukee, Wis	343 68
	John Nazro and Co	" "	2,536 37
	A. H. Gardner and Co	" "	107 82
	James Wood and Co	" "	263 77
	L. J. Bush and Co	" "	66 00
	Hale, Freckleton and Co	" "	9 02
	S. Bush and Co	" "	24 80
	G. Pfister and Co	" "	22 50
	E. Richardson	Chicago, Ill's	634 09
	H. H. Taylor	" "	243 00
	Fairbanks, Greenleaf and Co	" "	193 50
	Cupples, Marston and Peck	" "	144 00
	Ellenwood, Stafford and Co	" "	98 90
250	Goodnow, Hinds and Co	Chicago, Ill	50 53
	Hopgood, Young & Co	" "	41 00
	Newcomb and Fernald	New York City, N. Y	2,155 79
	R. J. Roberts	" " "	111 35
	M. L. Filley	Troy, "	1,340 00
	Pratt and Co	Buffalo, "	600 00
	F. Cummings & Co	Dixon, Ill	468 05
	John Drew and Co	Moline, "	140 00
	Monroe Manufacturing Co	Monroe, Wis	151 98
	W'm Blackford	" "	88 00
	Wright and Hunt	Janesville, Wis	93 93
	Jewell and Hall	Brodhead, "	2 50
	L. R. Bentley	Milwaukee, "	16 25
	Judd and Hiles	" "	31 75
	Bowie and Co	" "	49 38
	W'm Frankforth	" "	14 91
	Hooker and Weare	Chicago, Ill's	40 15
	Parker & Stone	Beloit, Wis	6 80
	F. D. Cook	Waukesha, Wis	18 00
	Pratt & Litchward	Buffalo, N. Y	8 24
	G. J. Kellogg	Janesville, Wis	6 00
	W. J. Doolittle	" "	2 32
	Barr & Cox	Beloit, "	45 20
	Aaron Smith	Brodhead, "	30 00
	J. Chadwick	Juda, "	44 67
	J. Broughton	Brodhead, "	1 00
	Town of Decatur	Decatur, "	46
	G. T. Spaulding	Brodhead, "	20 66
	Lawrence and Atwood	Janesville, "	9 50
	Markley, Alling & Co	Chicago, Ill's	32 68
	P. S. Meserole	" "	25 25
	Wait, Gallup & Co	Watertown, Wis	9 75
	S. West	Brodhead, "	5 80
	Skinner, Briggs & Enoch	Rockford, Ill's	118 00
	Thomas Butler	Spring Grove, Wis	5 30
	S. Lewis	Monroe, "	5 30
	W. W. Wright	" "	5 50
	W. H. Barnes	Brodhead, "	5 50
251	Wooster & Bro	Brodhead, Wis	51 19
	F. S. Lawrence	Janesville, "	10 00
	Smith & Boswick	" "	100 00
	Doty Manufacturing Co	" "	50 00
	Henry Sears & Co	Rockford, Ill's	300 00
	E. S. Barrows	Janesville, Wis	51 00
	S. P. Hayner	" "	1,083 30
	James Cutton	Edgerton, "	300 00
	Mrs. S. E. Hall	Tunbridge, Vermont	1,719 82
	Brooks Edge-Tool Co	Brooksville, "	73 43
	I. J. Mack, jr	Sandusky, Ohio	400 00
	L. M. & M. P. Jerdee	Madison, Wis	258 30
	Winchester, Partridge & Co	Whitewater, Wis	17 94
	Cornish and Cartise	Fort Atkinson, "	22 00
	John Taylor	Brodhead, "	575 93
	Oscar Allen	" "	100 00
	W. K. Cortchyon	" "	200 00
	D. Vanderbilt	" "	83 00
	N. Enfield	" "	46 00
	F. C. Yolten	" "	13 40
	J. Kirkpatrick	" "	160 50
	Mrs. J. C. Moore	" "	160 00
	M. McNair	" "	100 00
	R. N. Rugg	" "	100 00

	Name.	Residence.	Amount.
	L. C. Morrison	" "	39 06
	E. Hahn	" "	37 00
	Clapp and Sawyer	" "	14 67
	H. Guernsey	Janesville, Wis	25 73
	Douglas and Colby	Brodhead, "	17 55
	Hendrie & Pierce	" "	10 80
	E. Cole	" "	238 96
	G. K. Rustergen	" "	9 81
	E. Knutesan	" "	4 60
	Kartz & Vance	" "	4 79
	Tolan & Kelly	" "	8 10
	Williams & Ballou	" "	3 60
	Vasbeck and Clauson	" "	22 75
	George R. Manell	" "	67
252	C. H. McCormick & Co	Chicago, Ill's	528 43
	L. P. & M. P. Jerdee & Co	Madison, Wis	200 00
	N. S. Vedder	Troy, N. Y	232 00
	McKey & Bro	Janesville, Wis	6 50
	R. J. Richardson	Janesville, Wis	47 30
	Rowly Cook	Brodhead, Wis	178 86

to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy to be holden on the second day of March, A. D. 1870, at 10 o'clock a. m., at Madison, Wisconsin, before Mr. Sidney Foote, register.

U. S. Marshal as Messenger.

CASSODAY, MERRILL & DIXON,
Att'ys, Janesville, Wis.

253 *R. J. Richardson.*

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
ag't
JAMES WAGER, ANDREW B. FALES, & LEONard Lakin, defendants.

Deposition of R. J. Richardson, a witness produced, sworn, and examined on the part of the defendants James Wager and Andrew B. Fales, taken before me, George R. Peck, commissioner of the United States circuit court for the western district of Wisconsin, by agreement of parties, at my office in the city of Janesville, Rock County, Wisconsin, on Tuesday, the 27 day of December, 1870, at 11 o'clock, in the forenoon of that day.

At 11 o'clock a. m., parties appeared. Ashael Finch, esq., appeared for plaintiffs. J. B. Cassoday, esq., appeared for defendants.

R. J. RICHARDSON, being first duly sworn, deposes and says:

(It is stipulated by and between the parties that this deposition shall be taken subject to all objections as to ir'elevency, incompetency, and immateriality, but to no other objections unless specially made; and that it may be used in the action between the plaintiff herein and Andrew Hayner, now pending in said court.)

Q. What is your name, and age, and where do you reside?
A. My name is R. J. Richardson. My age is 40 years, and I reside in this city.
Q. How long have you resided in this city?
A. Twenty-four years.
254 Q. What business have you been in during that time?
A. A variety of business. In the hardware and stove trade, & manufacturing.
Q. How long have you been in the hardware and stove business?
A. 12 years; from 1852 to 1864.
Q. Since that time, in what business have you been?
A. Manufacturing.
Q. Are you acquainted with the defendants, Wager & Fales?
A. I am.
Q. How long?
A. Since 1857.
Q. Did you ever have any deal with them?
A. Yes, sir.
Q. How much?
A. Quite extensive.
Q. In hardware?
A. Stoves.
Q. You have bought them?
A. Yes.
Q. Are you acquainted with the defendant, Leonard Lakin?
A. I am.
Q. How long have you been acquainted with him?
A. Since 1855.
Q. Did he ever work for you?
A. He did.
Q. During what time?
A. I think during the summer of 1857.
Q. In what business?
A. Hardware.
Q. How long did he work for you?
A. A few months.
255 Q. He resided here at Janesville, did he?
A. At that time he did.
Q. How long did he reside here in Janesville prior to his going to Brodhead?
A. Some years. I don't know just how long.
Q. When did he go to Brodhead?
A. In 1857, '8, or '9, I think.
Q. Did you become well acquainted with him before he went to Brodhead?
A. I did.
Q. Do you know anything of his buying stoves of the defendant', Wager & Fales?
A. Yes, sir.
Q. Where do they reside, and what is their business?
A. They reside in Troy, N. Y., and are stove-merchants.
Q. How extensive?
A. I don't know the amount of business, but it is very extensive.
Q. State what you know about his contracting this bill of goods that you speak of. When did he commence trading with them?

A. I think he must have commenced in 1862 or 1863. I know of Messrs. Wager & Fales asking me if it was safe to sell to him.

Q. When did they ask you that first?

A. I don't remember dates, but it was early in the year 1861, 1862, or 1863. It was very soon after his assuming control of the business at Brodhead.

Q. Was he in business there at Brodhead prior to his assuming control of the business?

A. He was, as a partner of mine.

Q. During what time were you in partnership with him at Brodhead?

A. In 1859, '60, & '61, I think.

Q. Then you went out of the business, did you?

256 A. I then sold out the entire interest to him.

Q. You say soon after that they applied to you to know if he was good?

A. Yes, sir.

Q. What reply did you make to them?

A. That he was good; that I considered him good.

Q. Did they make any enquiries of you subsequent to that?

A. They did.

Q. How many times?

A. Often.

Q. What were your replies?

A. That I thought him safe.

Q. Do you know anything of his buying a bill of goods there in 1867—a bill of stoves?

A. I don't know the year.

Q. State, if you know, the indebtedness for which this mortgage was taken.

A. I don't know that I knew anything about it till the summer of 1869.

Q. What did you know about it then?

A. Mr. Lakin and Mr. Johnson both came to me that time to consult about that claim.

At half past 12 o'clock p. m., adjourned till 2 o'clock p. m.

At 2 o'clock p. m., parties met. The examination of R. J. Richardson being continued, he testified as follows:

Q. State what occurred between you and Lakin at that time.

A. Lakin first came to me, and asked me what he had better do; that Mr. Johnson was here, in behalf of Wager & Fales, asking for a settlement; that they had proposed to give time by his giving them

257 security by taking a mortgage on his store. Lakin said that he did not wish to do that, for he was fearful that it would injure his credit. I told him he had either better get long time or give them some of his bills receivable. That is the sum and substance of all that occurred. He asked my advice, and I gave it. The same day Johnson came to me and asked me what he had better do with that claim, telling me that Lakin did not like to give a mortgage, as he had proposed to take, for the reason that it would look bad on paper—on record. I told him, as I did Lakin, that he had better get a mortgage, or get some of his bills receivable; that Lakin needed the time to pay, and was worthy of the time; that Lakin's note was good without the mortgage if he lived. He replied that he had no disposition to hurry the matter in haste; that he would let Lakin do about as he *was* a mind to about it, but that he was instructed to close it up, to get it out of an open ac-

count. He had appointment with Lakin to take place the afternoon of the next day to come to some conclusion about it.

Q. How early in the summer was that?

A. It was in May or June 1869, I think.

Q. Was anything said in that conversation with Johnson about Lakin's responsibility; what he was worth?

A. I think there was.

Q. What was it?

A. In substance it was to the effect that Lakin was eight or ten thousand dollars ahead, but that he had no money.

Q. Do you know whether the goods for which the debt was contracted had been sold?

258 A. I think they were. Mr. Lakin informed me the spring before, when he sold his interest in the stove trade.

Q. Do you know whether he had realized?

A. He had not. He sold on long time.

Q. To whom?

A. I don't remember the name. It was one there in Brodhead.

Q. Was anything said in that conversation with Johnson, whether or not Lakin had realized from the stove trade?

A. I think there was.

Q. What was it?

A. I don't remember distinctly, but it was to the effect that he could not pay till he had realized from the stove trade.

Q. What was next said?

A. I think that is about all there was said at that time.

Q. What was the next that was said or done about the claim to your knowledge?

A. Two weeks after, Johnson informed me that he had left it open as it was, by Lakin's promising to pay stipulated sums in stipulated times, weekly or monthly. I think Lakin also informed me to the same effect the next time I saw him. I told Lakin he had promised it too quick; that he had promised it faster than he could pay unless he forced collections from his customers. He said he should try to meet it as he had promised. The next *the next* I knew about it was in October. I rec'd a letter from Messrs. Wager & Fales asking about the account, making inquiry about Lakin, to the effect that he had not paid as they had expected, or as he had promised. I replied to the letter that I
259 thought I could fix the matter up to their satisfaction if they would send me a statement of the account. They did send me a statement with the request that I should get security, and give Mr. Lakin the shortest time possible, leaving the manner of closing it and the time given to my own discretion. After receiving their statement I wrote Mr. Lakin to come and see me the first time he was in the city. Something like a week or ten days after, Mr. Lakin called to see me. I made known my business, and asked him what was to be done. He made a verbal agreement to take notes of $600 each, stipulated time until three years. The last one due in three years, I think. He was to secure the payment of the notes by a mortgage on his store. He went home with the intention of executing the papers, making an abstract, &c., and was to send the papers to me when executed. I wrote Messrs. Wager & Fales the terms of agreement. They replied that it was not satisfactory; that the time was too long and that the security was not satisfactory, being a second mortgage. They wanted a first mortgage if they had to give so long time. They left the time at my discretion, and desired me again to get better security and shorter time if I could. I then wrote Mr. Lakin

that things must remain as they were and not go any further till he saw or heard from me. Some weeks after, or several days after, I saw Mr. Lakin, and we fixed things up by his giving more security and shorter notes. I left the statement with Mr. Lakin, which he thought was not correct, that it was too much. He proposed to give his notes and
260 mortgage for $3,000, and leave the rest, one hundred and odd dollars, to be adjusted between him and Wager & Fales. I left the statement with him, and he was to send me the papers with an abstract of title and insurance policy running to Wager & Fales. After several days he sent the papers to me as per agreement. I sent the notes to Wager & Fales, & the mortgage to Green County for record. A week or ten days I presume intervened before the papers came from Lakin's, property executed. The understanding was, also, that he should set aside $600 of his customers' notes that were due & coming due, for the purpose of meeting the first note of $600, and then, as that was paid, $600 more to meet the second note, and so on until they were all paid. I said to Mr. Lakin that he was very slack about collecting his accounts & that he had better make that arrangement, not because we wanted more security, but that it would give him an excuse for pushing those men who ought to pay. He gave me a statement of the notes and accounts of his customers, amounting to $800. He set them aside and considered them as for the benefit of the payment of his first note. I left the notes and accounts and urged him to enforce payments and remit it as fast as he could. That's about the end of my knowledge of it. I received also the insurance policy and got the mortgage recorded. I think I also got an acknowledgment of the receipt of the note from Wager & Fales.

(Mortgage and five notes shown witness.)

This is the mortgage, and these the notes.

261 (Mortgage and notes offered in evidence, and copies thereof hereto annexed instead of the originals by consent of plaintiffs' atty's, and marked Exhibits A, B, C, D, E, & F, respectively.)

Q. Were any notes or mortgage made prior to these?

A. There were notes and mortgage made in pursuance of our first agreement, but they were never sent forward, as before they were sent I received Messrs. Wager & Fales' letter disapproving of the agreement.

Q. How long was that prior to this mortgage?

A. I should think a week or ten days.

Q. Wherein did they differ from these notes and this mortgage?

A. They were longer time, and the mortgage covered the store, only a portion of this property. The amounts and interest were the same.

Q. When you informed Lakin that things must remain as they were, what things do you refer to?

A. The adjustment of the accounts. At that time I had not received the notes & mortgage, and I informed him so, that he need not go any further with the business of making the papers, getting an abstract, &c.

Q. How long prior to the date of the notes & mortgage did you first commence negotiating this settlement with Lakin?

A. I should think about six weeks.

Q. Were you in a hurry in closing it up?

A. No, sir; we talked about it as we met.

Q. Had Mr. Lakin or had he not counseled with you more or less about his business?

A. He always had since he commenced business at Brodhead.

262 Q. Did he in connection with this claim of Wager & Fales talk to you in regard to his circumstances?

A. I don't know that he did with particular reference to that; I had

such a particular knowledge of his business from his statements that he did not need to.

Q. Did he make such statements during the spring or summer or autumn of 1869?

A. He did at the time of fixing up this account.

Q. Did you suppose you knew, during the spring, summer, and autumn of 1869, his condition?

A. I did; I saw his annual inventory for the year 1867 & '8, and I think every inventory he ever made.

Q. From what you knew of his affairs at the time Johnson was here in the spring or summer of 1869, or from what you learned from him or any one else, did you regard him solvent or insolvent?

A. From the information I had from him, I thought he was perfectly solvent, and I never had any intimation from any one else in regard to his affairs.

Q. How did you regard him from your personal knowledge of him & his affairs?

A. Sound financially, morally, and physically.

Q. How did you regard him at the time of fixing up of these matters in September, Oct., and November, 1869, and up to the time of taking these notes & mortgages?

A. I regarded him as worth over $10,000 over and above his liabilities, and I had no reason to think otherwise.

Q. How did his condition, as represented to you by him, and as
263 you understood it at the time, from the spring of 1869 until you received these papers, correspond with his condition in 1867, or for two or three years previous to 1869?

A. During the spring & summer of 1869 I had seen no statement of his affairs, nor do I remember of his speaking of them, other than that he had done no worse than years before; that he had done reasonably well each year in succession.

Q. How did it compare with p'eviously?

A. His statement showed a fair increase from year to year.

Q. Did you regard him in better or worse circumstances?

A. Better.

Q. From what he said to you, & from what you knew of his condition, how did it compare at the time of sett'ing up this matter with other merchants in the same business?

A. With but very few exceptions his condition was as good as the majority of merchants in the same business throughout the country; as good as ever I was while I was in the same business.

Q. How did you regard his credit during that period—yourself personally?

A. I regarded him as worthy of any credit that would be consistent with his business.

Q. Did you give him any credit during that period?

A. Not to any extent, except by indorsing his paper.

Q. To what extent did you endorse his paper?

A. I don't know the amount, but it was several thousand dollars. I was about to say that we always had an open account with him, and gave him all the credit he wanted. It was not a large amount,
264 for he did not deal in goods in our line. We sold him goods on credit—$200 or $300 worth, during the six or 12 months prior to September and October, 1869. He also sold on commission for us, accounting for goods when sold.

Q. To what extent did you endorse for him during the summer and autumn of 1869?

A. I don't remember the amount, but it was up in the thousands of dollars. One note of $1,000 was endorsed for him Sept. 22, 1869. In October, 1869, I think it was, I endorsed a $500 note for him. It was after the $1,000 note was endorsed.

Q. When did you first ascertain that Lakin was insolvent?

A. About the first of January, 1870; a short time after that I should think. The first intimation I had of it was a printed statement from him.

Being cross-examined by A. Finch, esq., defendant testifies as follows:

Q. When did you receive this claim from Wager & Fales to settle?

A. In October, 1869, I think.

Q. When were the goods purchased by Lakin?

A. I think in 1867, but I am not sure; I only know that from my memory of the statement sent me.

Q. On what time were the goods purchased?

A. I do not know. It seems to me, though, that they were purchased on six months'.

Q. How long was the bill overdue when you received it for collection?

A. I think about 20 months.

Q. Were Wager & Fales, or either of them, here in 1869 to see about the debt?

A. Not that I know of.

265 Q. Who is Johnson, spoken of by you, and what was his business?

A. He is now of the firm of Wager & Fales & Co. I suppose he was a partner in 1869.

Q. What was his business here at that time?

A. He was on a general tour.

Q. Was he doing business for Wager & Fales as their agent?

A. He was; so I understood.

Q. What did you understand Johnson to mean by asking you what he should do with the debt against Lakin?

A. I suppose he meant to ask my advice in regard to the matter.

Q. About what?

A. The settlement of this claim.

Q. Did he say anything about a settlement?

A. He did.

Q. What?

A. He spoke of taking a note & mortgage.

Q. Anything else?

A. Something was said about reserving bills receivable in place of the notes and mortgage; what I mean by bills receivable, is notes and accounts due Lakin.

Q. Was that all he had to say about it?

A. In substance, yes sir; that I now remember.

Q. Would he not have known how to have got a note & mortgage out of Mr. Lakin without asking you?

A. I presume he would.

Q. Then I repeat what did he mean by asking you what he would do with the claim?

A. I can't answer other than I did before, that he wanted to get my views as a friend of Lakin & a friend of Wager & Fales.

266 Q. Did not this question imply some anxiety about his debt, when he said "what shall I do?"

A. It did not convey any such impression to me.

Q. Do you mean to be understood as saying that he expressed no solicitude about the debt?

A. Not other than having it fixed from an open account to notes.

Q. Did he regard, at that time, Mr. Lakin as perfectly good?

A. I understood that he did.

Q. From whom did you understand it?

A. From himself.

Q. Did he say so?

A. Not direct.

Q. Why, then, do you say that you understood from him that he did regard him as good?

A. From his general conversation.

Q. Well, what did he say?

A. The question of his solvency was never questioned.

Q. Question repeated.

A. I don't remember any precise words or sentences, but it was to the effect that he did not want to force payment or force him to give notes and mortgage, but that it been running a long time, and he thought it no more than right that it should be got from an open account into a note and mortgage.

Q. If he regarded him as good, why did he want a mortgage to secure the debt?

A. I don't know from anything that he told me, but I supposed it was a business like transaction to ask security when the time was extended, to guard against all emergencies.

267 Q. Is it customary for merchants who are perfectly solvent to give mortgages to secure their paper past due?

A. I have often done it myself, and know others to do it. I have not a universal knowledge, but I should say it is customary. I have often taken security myself on paper past due, and have often given it, and known others to do.

Q. Did Johnson get a mortgage from Lakin for the debt at that time?

A. I was informed that he did not.

Q. How long after that was it that Wager & Fales sent to you the claim?

A. Several months.

Q. How did they send it to you?

A. By United States mail, in a letter.

Q. Do you keep files of your letters?

A. Not all of them.

Q. Have you that letter?

A. I do not know. I can tell by looking.

Q. Will you look, and produce it if found, and make it a part of your deposition, or a copy of it?

A. I will.

Q. Did you receive from Wager & Fales any other letter in relation to this matter prior to the execution of the mortgage? If so, will you produce them also, and make them a part of your deposition?

A. I received one, and perhaps more; I will produce all that I can find.

Q. I understand you to say, on your direct examination, that Lakin made an arrangement by which he agreed to pay this debt in weekly or monthly instal'ments. Am I correct in so understanding you?

A. You are.

268 Q. Did Lakin keep that agreement; and, if not, why not?

A. I was informed by some of the parties interested that he did not keep it.

Q. Can you tell why he did not keep it?

A. No; only my own supposition.

Q. What was your supposition?

A. That he had not the money to keep it with.

Q. Do you mean that he had not the ability to keep his agreement; that is, to pay the debt according to promise?

A. I mean that he had not the means which would be recognized as a legal tender.

Q. In other words, you mean that he had not the money to pay?

A. That was my supposition.

Q. You have said that during this time you believed Lakin to be solvent. Will you now state what you understand to be a state of solvency, or, in other words, what is insolvency?

A. I understand insolvency to be the condition of a man who has not sufficient money, nor assets convertable into money, sufficient to liquidate his liabilities.

Q. Would you say that a merchant doing business who allowed his paper to be over-due from 18 months to 2 years, and being pressed for payment, had not the money to pay it, was solvent?

A. I could consider him perfectly solvent if he had the property, although it was not money.

Q. You believed Lakin, in December, was solvent. How many days after that was it that you found that he was hopelessly insolvent?

269 A. I believed he was solvent up to the time I heared he was otherwise. I think it was a few days after December that I discovered it.

Q. You proposed to Lakin, in the first place, an extension running through thre' years. Now, why did you propose to give him that length of time?

A. At Lakin's request.

Q. Why did Lakin want 3 years' time to pay that debt?

A. I don't remember that he specified any reason.

Q. Is not a three years' credit an unusual credit for a merchant in active business?

A. It may be unusual, but they all take all they can get.

Q. Is it not an unusual thing for a merchant in active business whose debt is over-due 18 months or 2 years to ask an extension upon that debt of 3 years?

A. It is not.

Q. Would you think a merchant who did business in that way was worthy of credit?

A. Under certain circumstances I should.

Q. Would you not regard a merchant who asked a three years extension upon a large debt of $3,000 as being in the attitude of a suspended merchant, or a merchant who has suspended payment?

A. In my general understanding of a suspended merchant I should not.

At 5 p. m. adjourned till 7 p. m.

At 7 p. m. parties appeared.

The cross-examination of R. J. Richardson being continued, he deposed as follows:

270 Q. Suppose the merchant was pressed for payment, and could not pay it, what then would be your opinion?

A. If he could not pay upon being pressed I should think it was time to suspend.

Q. Was not Mr. Lakin pressed for the payment of that $3,000?

A. Not that I know of.

Q. Were Wager & Fales anxious to get their pay?

A. I should presume they were.

Q. Have you searched for the letters re'eived from Wager & Fales?

A. I have not. I will do so to-morrow morning. My office is some distance, and I have not been there.

Q. When you notified Wager & Fales of the arrangement for an extension of three years, what reason did they assign for delivering a mortgage on 3 years time?

A. They did not assign any reason, nor did they positively object to the 3 years' time.

Q. I understood you to say, in your direct examination, that they did object to it, because it was too long. Do you mean to be understood that way or some other way?

A. I wish to be understood that they only requested shorter time if it would be consistent.

Q. Did not Lakin say that he could not pay until he had made collections?

A. I don't remember that he said that in so many words.

Q. Did he substantially?

A. Yes; till he could collect or sell.

271 Q. Was Mr. Lakin doing what you call a wholesale business?

A. No, sir.

Q. Was he a mere retailer?

A. Yes, sir.

Q. Is it customary for a retail merchant, who is in good standing, to give to his creditors notes and accounts against his customers as collateral security on the purchase of goods?

A. It is very often done.

Q. If a merchant was in good credit is it usually required of him to put up collaterals?

A. It may not be usually required, but it is very often required when a man is in good credit enough to buy all the goods he needs.

Q. If a merchant known to you to be in good standing should apply to you to purchase a bill of goods would you require him to put up collaterals?

A. Usually not for the purchase of goods.

Q. You have stated that, during the six months prior to the failure of Lakin, he purchased goods of you. Did he pay you for all the goods he got? If not, state how much he failed to pay.

A. He purchased often, and paid for all except the last, or a part of the last, purchase?

Q. What was the amount of the last purchase?

A. I do not remember.

Q. About how much?

A. I think about $75.

Q. Did you have any collateral security for your endorsements which you made for Lakin?

A. I did not.

Q. Why did you want notes and accounts as additional security

272 to the mortgage if you thought Lakin was good, and the mortgage was good?

A. I did not want them *them* as additional security, but thought it advisable for Lakin' *for Lakin's* old debtors to pay his old debts—for making his old debtors pay his old debts.

Q. Was it your view to force collections from his old debtors that that course was suggested?

A. It was my view that Lakin should urge the payments from his old debtors, & that this would be an excuse for him to force them.

Q. Do you mean by that that his customers or debtors were slow in making payments?

A. Yes; and that he was slow in making collections.

Q. Had not that fact or state of things embarrassed Mr. Lakin in making his payments promptly?

A. Without doubt.

Q. Did you not tell Johnson, or write to Wager & Fales, that such was the fact?

A. I do not know as I did, and do not know but I did.

Q. Did you state to Johnson, or write to Wager & Fales, any excuse for Lakin's inability to pay this debt; and, if so, what?

A. I don't know but I stated or wrote to Mr. Wager or to Johnson that Lakin had built a large store, and that it had cost a good deal of money.

Q. What did that store cost?

A. Mr. Lakin informed me that it was about $7,500. It was between $7,000 & $8,000.

Q. Did not the building of that store embar Mr. Lakin, and
273 damage his credit as a merchant?

A. I should presume that he was embarrassed somewhat by building the store, but do not think it need to injure his credit.

Q. Was it not one reason that prevented him from meeting his payments promptly?

A. I should think it was.

Q. What was the whole claim that Wager & Fales sent to you to collect or secure?

A. About $3,150.00.

Q. Did you inform Wager & Fales that you had abated $150 on the settlement?

A. I did not.

Q. You sent them the mortgage and the notes that you received?

A. Yes, sir.

Q. Did they ever say anything to you about the amount of discrepancy between the mortgage and the amount of the bill they sent you for collection?

A. I don't think they did.

Q. I understood you to say, in your direct examination, that you wrote to Wager & Fales, proposing the 3 years extension, & that they replied to you that the time was too long, and that you must get it on the shortest time possible. Did I understand you correctly? If not, state what you did say or meant to say.

A. I meant to be understood as saying that they requested shorter time, and demanded better security.

Q. When did you cease to endorse Lakin's paper?

A. I think October, 1869, was the last time I was requested.

Q. Did he not apply to you after that to endorse his paper?

274 He did not. It might have been in November, but I think it was in October.

Q. Did you go to Brodhead to see about getting up this mortgage?

A. I did.

Q. Did you at that time converse with anybody in Brodhead as to the financial condition of Mr. Lakin; and, if so, who?

A. I don't think I conversed with any one except Mr. Lakin.

Q. How long was that before the mortgage was executed?

A. A few days; about a week, I should think.

Q. That mortgage you allude to was the last one?

A. Yes.

Q. And that is the mortgage now produced here?

A. Yes, sir.

Q. How long before that was the first mortgage that Lakin made out executed?

A. A week or 10 days I should think.

Q. Did you send the first mortgage to Wager & Fales?

A. I did not.

Q. Why not?

A. Their letter desiring a change came to me before the notes & mortgage did.

Q. What change did they want made?

A. Better security and shorter time.

Q. When you went to get the last mortgage did Mr. Lakin show you a balance-sheet or a' exhibit of his financial condition?

A. He did not.

Q. Did you ask him for one?

275 A. I don't think I did.

Q. When was the last time before that date that you saw a balance-sheet of his?

A. It was in the spring or winter of 1868 or 1869.

Q. It could not have been in the winter of 1869, could it?

A. I am not clear whether it was in the early winter of 1869 or 1868.

Being examined on the re-direct examination, the witness testified as follows:

Q. Did Mr. Johnson come there specially to fix up this matter, in the spring or summer of 1869, or on other business?

A. He was here on his general yearly tour for the Western States.

Q. For Wager & Fales & Co.?

A. As I supposed. He accidentally met Lakin in the city, at that time; he didn't go to Brodhead specially to see him.

Q. If you know, state when Mr. Lakin commenced building that block, and when he finished.

A. I do not know, but think it was in the spring of 1868 that he commenced, and finished in the fall.

Q. Did the fact that Lakin had put a good deal of money into that block in any way affect the willingness of Wager and Fales to grant him an extension; and, if so, how?

A. I have no knowledge whatever of their views in regard to that, and have no means of knowing.

Q. Do you know whether they were or were not willing to accommodate him by granting him an extension?

A. They wrote me that they were willing to grant him an extension.

276 Q. Do you know what the circumstances of Wager & Fales were at this time; what they were worth, or reputed to be worth?

A. I only know from their reputation in Troy. They are reputed to be worth from $1,000,000 to two millions.

Q. Do you know what their custom is about granting extensions to customers in the country?

A. In many instances I know of their being unusually indulgent. In some cases their accounts have run, to my knowledge, six years unpaid.

Q. Is it usual for merchants to ask or wholesale dealers to grant long extensions without security?

A. It may, perhaps, be usual to ask it, but I think it is hardly usual to grant it without security.

Q. What did you understand to be Mr. Lakin's object in asking this extension?

A. To go on with his business smoothly, and to pay smaller claims more promptly.

Q. Did he ask you to endorse for him any time when you refused?

A. I don't think he ever did.

Q. What was there about the $150 over & above the mortgage that he owed?

A. It was, as Mr. Lakin informed me, when he saw the statement some unsettled insurance between the parties that he did not wish to allow, and some interest which he wished a little time to adjust with Messrs. Wager & Fales, which he agreed to do, and I wrote to Messrs. Wager & Fales to that effect.

At 9 p. m. adjourned till half past eight to-morrow morning

277 At 9 a. m., Wednesday, Dec. 28, 1870, parties appeared. The cross-examination of R. J. Richardson being continued, he testified as follows:

Q. Have you examined for the letter from Wager & Fales & Co., enclosing account against Lakin to you for collection?

A. I have.

Q. Do you find it?

A. I do not.

Q. Do you find the account enclosed in it?

A. I do not.

Q. Have you found any other letters? If so, produce them.

A. Yes; I find a letter dated Troy, Dec. 22, '69, enclosing a corrected account against Lakin, which are offered in evidence by plaintiff, and marked, respectively, Exhibits G & H. I also find a letter dated Troy, Jan. 6, 1870. (Letter offered in evidence by plaintiff, and marked Exhibit "I.")

Q. Is that account the one sent you first for collection?

A. No; it is the corrected account.

Q. Is it not the same account with alterations made at the bottom?

A. That may be so. (Witness looks at account, and says I think that is the same account, with corrections made at the bottom.)

Q. From whom did you receive the letter enclosing the account in the first instance—from Wager, or from Wager & Fales, or from Johnson?

A. Either Wager & Fales, or Wager, Fales & Co. I do not remember which.

Q. Who constituted the company of Wager, Fales & Co.?

A. Mr. Johnson.

278 Q. Can you remember of Wager, Fales & Co., in their letter

sending the account, saying anything to you about the necessity of getting this debt secured?

A. Not particularly.

Q. Have you any other letter from the firm, or either of the firm, in relation to getting security?

A. I have not.

Q. Have you made a thorough search for this letter enclosing the account?

A. I have.

Q. Did you find any other letter from Wager, Fales & Co., on examining for the two produced?

A. I found one.

Q. What date was that?

A. About 4 weeks since.

Re-direct:

Q. How does this corrected account differ from the one you received in October?

A. I do not remember now, but only judge from looking now, and what I can see, which is an alteration of the time of commencing the reckoning of interest of two months—the first account commencing four months from date of invoice, and this one six months.

Q. I find on the first page of sheet 9 of your cross examination, that you state, in substance, that Lakin informed you, substantially, that he could not pay until he could either collect or sell. What did you understand that he proposed to sell?

A. His daily sales—goods and hardware in his usual business.

Re-cross examination:

279 Q. I notice in the account marked Exhibit H, that Lakin is debited to his note returned to him, and interest on it, $481.97. Can you explain it?

A. I think Mr. Lakin told me that that was a past-due note, and that he had remitted the money; that they had credited him with the money, & charged the note—the amount of the money remitted & the note not cor'esponding in amount. The note was a past-due note when this account was made. If not past-due, it was for a bill of goods made previous to 1867.

Q. Did you inform Wager & Fales that there were prior incumbrances on the property, or a portion of it, covered by the mortgage that you received from Lakin.

A. I did.

Q. Did you keep a copy of your letters as a general thing—a copy-book or letter-book?

A. I do not keep copies of letters other than those connected with my business.

Q. Did you keep a copy *a copy* of your correspondence with Wager & Fales?

A. I did not.

R. J. RICHARDSON.

280

281 *Exhibit A.—Mortgage.*

This indenture, made this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-nine, between Leonard Lakin and O. A. Lakin, his wife, of the town of Brodhead, & county of

Green, & State of Wisconsin, of the first part, and Wager & Fales, of the city of Troy, New York, of the second part, witnesseth, that the said parties of the first part, in consideration of the sum of three thousand dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and, by these presents, do grant, bargain an' sell unto the said parties of the second part, and to their heirs and assigns forever, all that certain piece, parcel, or tract of land situate, lying, and being in the town of Brodhead, county of Green, and State of Wisconsin, and known and distinguished as the north one-third (⅓) of lot one, (1,) block one hundred and one, (101;) also all of lot three (3) in block one hundred and one (101;) also the north half (½) of the south half (½) of the block seventy-nine, (79;) also the east half (½) and the southwest quarter of block two hundred and six, (206;) also all of block one hundred and forty-two, (142,) all in said town of Brodhead, & county of Green, and State of Wisconsin, according to a map thereof recorded in the office of the register of deeds in and for said county.

[6 U. S. rev. stamps, at 50 c. each, duly canceled.]

To have and to hold the above bargained premises to the said
282 parties of the second part, their heirs and assigns forever: Provided always, and these presents are upon this express condition that if the said Leonard Lakin, his heirs, executors, administrators or assignes shall well and truly pay or cause to be paid to the said parties of the second part, their heirs, executors or assignes, the sum of three thousand dollars and interest thereon as follows: Six hundred dollars on or before six months after date, with interest at ten per cent.; six hundred dollars on or before twelve months after date with interest at ten per cent.; six hundred dollars on or before sixteen months after date with interest at ten per cent., interest payable annually; six hundred dollars on or before twenty months after date with interest at ten per cent., payable annually; six hundred dollars on or before two years after date with interest at ten per cent., payable annually, according to the tenor of five certain promis'ory notes, bearing even date herewith, executed by the said Leonard Lakin to the said parties of the second part, as collateral security, and shall pay all costs and expenses which the said parties of the second part, their heirs, executors, administrators or assignes may be put to, incur, or sustain over and above the costs and fees which now are, or may hereafter be, allowed by law in collecting said notes or foreclosing this mortgage and any costs or expenses which the said parties of the second part, their heirs or assigns, shall necessarily pay, be put to, or sustain in any suit commenced upon said mortgage, or said notes and mortgage, though the sum of money then due and secured thereby, and to collect which said suit shall be brought,
283 shall be paid before judgment or decree obtained in any such suit, and the sum of thirty dolls., as attorney or solicitor's fees in addition to the fees taxable by law; then these presents and the said mortgage shall cease and will be null and void; and the said Leonard Lakin agrees to insure the store for $2,800 *doll's*, for the benefit of said Wager & Fales, & keep the same insured, and does further covenant, and agree to and with the said parties of the second part, their heirs, executors, administrators, and assignes to pay or cause to be paid said sum of money above specified at the time and in the manner above mentioned together, with all such costs, expenses, and attorney or solicitor's fees, if any there shall be, and that he will pay taxes and assessments of every nature that may be assessed on said premises, previous

to the day appointed in pursuance of any law of the State for sale of lands for taxes.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

LEONARD LAKIN. [SEAL.]
O. A. LAKIN. [SEAL.]

Sealed and delivered in presence of—
S. P. TAFT.
A. L. DOUGLASS.

STATE OF WISCONSIN, *County of Green, ss:*

Be it remembered that, on the twentieth day of December, A. D. 1869, personally came before me, the above-named Leonard Lakin and O. A. Lakin, his wife, to me known to be the person' who executed the foregoing mortgage, and acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned.

S. P. TAFT, *Notary Public.*

STATE OF WISCONSIN, *Green County, Wis.:*

Received for record the 25th day of Dec., 1869, at 8 a. m., and recorded in volume 9 of mortgages on page 607.

SAM. LEWIS, *Register.*

284 EXHIBIT B.

BRODHEAD, WIS., *Dec.* 15, 1869.

On or before six months after date I, for value received, promise to pay to Wager, Fales & Co., or order, six hundred dollars, with interest at ten per cent. Payable at Bowen & Co.'s bank. Secured by mortgage, and mortgage stamped.

LEONARD LAKIN.

JUNE 15–18, 1870.

EXHIBIT C.

BRODHEAD, WIS., *Dec.* 15, 1869.

On or before twelve months after date I, for value received, *I* promise to pay Wager & Fales & Co., or order, six hundred dollars, with int. at ten p'r c't. Payable at Bowen & Co.' bank. Secured by mortgage & mortgage stamped.

LEONARD LAKIN.

DEC. 15–18, 1870.

EXHIBIT D.

BRODHEAD, WIS., *Dec.* 15, 1869.

On or before sixteen months after date I, for value received, promise to pay to Wager, Fales & Co., or order, six hundred dollars, with interest, payable annually, at ten per cent. Payable at Bowen & Co.' bank. Secured by mortgage and mortgage stamped.

LEONARD LAKIN.

AP'L 15–18, 1871.

EXHIBIT E.

BRODHEAD, WIS., *Dec.* 15, 1869.

On or before twenty months after date I, for value received, promise to pay Wager, Fales & Co., or order, six hundred dollars, with in-
285 terest, payable annually, at ten per cent. Payable at Bowen & Co.' bank. Secured by mortgage & mortgage stamped.

LEONARD LAKIN.

AUG. 15–18, 1871.

EXHIBIT F.

$600] BRODHEAD, WIS., *Dec.* 15, 1869.

On or before two years after date I, for value received, promise to pay Wager, Fales & Co., or order, six hundred dollars, with interest, payable annually, at ten per cent. Payable at Bowen & Co.' bank. Secured by mortgage, stamped.

LEONARD LAKIN.

DEC. 15–18, 1871.

EXHIBIT G.

TROY, *Dec.* 22, '69.

DEAR FRIEND R.: We sent you statement of Lakin's a/c. He has returned it to-day, claiming that we had ch'g'd him to' much int. The int. was ch'gd' after 4 mo's. He claimed time till Jan. We have made the correction, and enclose the a/c again to you, and think you will find it correct. Glad to hear that Mrs. Smith around all right. All well.

Yours, truly,

A. B. FALES.

EXHIBIT H.

286 *Mr. Leonard Lakin bo't of Wager & Fales & Co.,*

1867.					
M'ch 12.	214 lb		castings, 8, $17.12; ch'g, 50c	17	62
June 13.	15 M	8	Guardians, 18.50	277	50
	5 "	9	" 21	105	00
	15 "	8	Guide, 14.50	217	50
	10 "	9	" 16.50	165	00
	10 "	8	Sensation, 15	150	00
	5 "	9	" 16	80	00
	5 "	8	H. Horn, 18	90	00
	5 "	9	" " 19	95	00
	2 "	8	B'k d'ft, 19	38	00
	2 "	9	" " 20	40	00
	3 "	8	Echo P. Cook, 10.50	31	50
	3 "	9	" " " 12.50	37	50
	10 "	21	Ida Belle, 8	80	00
	10 "	24	" " 9	90	00
	10 "	21	Twilight, 7	70	00
	10 "	24	" 8	80	00
	6 "	22	P. Belle, 7	42	00
	4 "	25	" " 8	32	00

6 " 15	tops and basis, 3	18 00		
10 " 18	" " 4	40 00		
10 " 24	" " 6.50	65 00		
2 " 27	" " 7.25	14 50		
50 setts 8 l'ge ware, 1.40		70 00		
50 " 9 " " 1.65		82 50		
10 " 8 small, 1.20		12 00		
10 " 9 " 1.40		14 00		
2 ⅝ 20	box, 4.75	9 50		
2 " 25	" 6.75	13 50		
2 " 31	" 10	20 00		
2 " 38	" 14.50	29 00		
6 " 10	pots, 1.48	3 15		
9 bbls. 35		3 15		
				2,237 03
287				
Aug. 29. 10 ⅝ 8	Guardians, 18.50	185 00		
10 " 9	" 21	210 00		
10 " 8	Guide, 14.50	145 00		
5 " 9	" 16.50	82 50		
3 " 8	Echo, P. Cook, 10.50	31 50		
3 " 9	" " " 12.50	37 50		
5 " 21	Ida Belle, 8	40 00		
3 " 16	box, 2.75	8 25		
3 " 20	" 4.75	14 25		
5 " 21	Twilight, 7	35 00		
50 setts ⅝ 8	l'ge ware, 1.40	70 00		
10 " 9	" " 1.65	16 50		
50 ⅝ 8	spiders, ec., 28	14 00		
50 9	" " 30	15 00		
5 ⅝ 8	Guardians, ex'n, 20.50	102 50		
541 lb castings, 8c		43 28		
				1,050 28
Nov. 1.	To note r'c't & interest			481 97
Dec. 14. 155 lb castings, (mountain guns,) 8		12 40		
Castings, 4s.; 1 bbl., 35		85		
				13 25
Oct. 29. 91 lb castings, Twilight & Guardian, 8				7 28
1868.				
Jan. 16. 2½ lb castings, 8				20
				3,807 63
1867.				
Oct. 30.	By cash	500		
June 30, '68. " "		200		
June 19, '69. " "		200		
July 8. " "		200		
				1,100 00
				2,707 63
	Interest Jan. 1, '70			428 47
				3,136 10

288 EXHIBIT I.

TROY, *Jan.* 6, 1870.

R. J. RICHARDSON, Esq., *Janesville.*

DEAR SIR: Your letter was duly received, with the five notes from Lakin for six hundred dollars each, and insurance policies, &c. We feel under great obligation to your kind attention in this matter, and shall, of course, expect to pay you for all your trouble.

Yours, truly,

WAGER, FALES & CO.

P. S. We rec'd Lakin's statement. All well. Love to all.

A. B. F.

289 UNITED STATES OF AMERICA,
Western district of Wisconsin, ss:

George R. Peck, commissioner duly appointed by the circuit court of the United States for the western district of Wisconsin, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed Feb'y 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed Sept. 24th, 1789, do hereby certify that the reason for taking the foregoing depositions is the consent of parties hereto. I further certify that I was attended by the parties or their counsel at the time and place as stated in the caption of said deposition, and by the said witness, and that the said witness, being of sound mind and lawful age, was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, and that the deposition as given was reduced to writing in presence of said witness, and from his statements, and that the said deposition, when completed, was carefully read over to said witnesses and subscribed by them in my presence, and in the presence of such of the parties and counsel in the said cause as were in attendance. And I do further certify that I am not of counsel
294 or attorney for either of the parties in the caption of said deposition named, nor in anywise interrested in the event of said cause.

In testimony whereof I have hereunto set my hand this 26 day of June, A. D. 1871, and of the independence of America the ninety-fifth.

GEORGE R. PECK.

291 *B. F. Johnson.*

District court of the United States in and for the eastern district of Wisconsin.

IN THE MATTER OF AUGUSTUS O. HALL, ASSIGNEE of the estate of Leonard Lakin, bankrupt, *agt.* JAMES WAGER & ANDREW B. FALES, MORTGAGEES. } In bankruptcy.

DISTRICT OF WISCONSIN, *ss:*

Before Francis Bloodgood, United States commissioner in and for said

dist. The deposition of Benjamin F. Johnson, on behalf of the mortgagees, at the commissioner's office, Milwaukee, July 20, 1870. Present Mr. H. M. Finch, of counsel for the assignee; Mr. Cassoday, of counsel for the mortgagees.

BENJAMIN F. JOHNSON, being duly sworn, doth depose and say as follows, to wit:

Am forty years old; reside in Troy, N. Y.; have lived there eleven years about. I know James Wager and Andrew B. Fales; have known Wager fourteen years, and Fales between ten and eleven years. I am now connected with them in business, as a partner; have been a partner three years next January. Prior to this I was connected with them in business as their agent; had been in their employ since 1860. I am acquainted with the bankrupt; have been, I think, six years; it may be more; it must be eight years; I can safely say it is 8 years. I know the fact of his being indebted to the mortgagees, Wager & Fales. I had a conversation with him in regard to settling this claim now pending. I was at his place at Brodhead, Wisconsin.

We have always talked over the accounts every year since I
292 knew him, and we talked over this account every year since its existence. I saw him in 1869 at Janesville; met him there accidentally. We talked over the matter about the settlement of the account, how it should be settled, and I proposed to him to give a mortgage on his property, and take time to pay the debt. I told him I thought that would be the better way, and then he could manage his other matters, and Wager & Fales could wait. We mentioned the store as the property to give the mortgage on. I told him that I thought he ought to settle, and that the better way was to give a mortgage; that the firm of Wager and Fales had dissolved, and that these old matters ought to be settled—closed; that there was no better way, if he had not the money, than to give a mortgage. He offered to turn out notes, three dollars to one. I told him that if we took the notes we would have to put them in the hands of our attorneys, and that that would injure his credit. He told me he was perfectly responsible, more so than when the debt was incurred, but that times were hard; that he depended on the former for his collections. After dinner we had another conversation, and he told me that if his matters was closed up under the hammer he would have more than $15,000.00.

Q. That is what he said to you?

A. Yes at that time. About the same time that day, I talked with R. J. Richardson, who was his confidential friend, and knew all about his business. I told Richardson what I proposed to Lakin, to have him give a mortgage and take time. Richardson thought that it would be the fair thing, but said we should not

have any fears about Lakin's responsibility; that though he had
293 not paid promptly, but that he was responsible. I asked him, and he told me why he thought so. He said Lakin had made a statement to him asking him to endorse, and that to get his endorsement he represented to him the whole condition of his affairs, and that, upon that statement, he (Richardson) endorsed for him. I went to Lakin, at Brodhead, within a day or two to sell goods. I saw Lakin there, and we had a further conversation in relation to this debt and the mortgage, and I told him of my talk with Richardson. He asked me what Richardson said. He said Richardson was a good friend of his; that he thought his opinion good; but he said, although he thought

favorably of the mortgage, he could not, at that time, say whether he could do it; that the extension would be an advantage to him. I reported all this to our house, stating that I thought Lakin sound, and our debt not precarious, but that it might take time to get it; that I tho'ughly investigated Lakin's matters, and that I thought he was without doubt worth from ten to fifteen thousand doll's should he be closed up under any circumstances. When I returned to Troy, I do not know how long it was after that, I told my folks about it, and read off the minutes I had in my minute book, made at the time, and told them what I had proposed in detail to Lakin, and that I thought Lakin required some little time to make him easy and comfortable in his business matters; and out of the friendship that we had for him, and consulting the many dollars he had paid us for goods and probably would again, that we ought to give him a little time; and that that
294 would close up the account on the books of Wager & Fales, and give them a ten per cent. mortgage, and put Lakin in good shape.

Q. Well, what next occurred.

A. I told our folks that they would have to claim 10 per cent. on the mortgage, and I considered Lakin responsible, and I thought it was our duty to accom'odate him for the reasons that he *he* had bought a great many stoves of us, paid us a good deal of money, and that he was partly a Trojan, and that I considered him a strictly honest and responsible man in every sense of the word, which our folks (my partners) fully acquiesced in, and that, when the proper time came, that we would have to fix it up in some way that it would be satisfactory to all parties.

Q. And when was that?

A. In September, I think.

Q. Did you have anything more to do with it; if anything, what?

A. The whole matter I advised nothing more done or said about it; and during the fall the matter again came up, and in speaking about our notes and accounts this matter was then talked of again, and I suggested that we had better send the whole matter out to Janesville to Mr. Richardson, and let him fix it up and give Mr. Lakin time. We did so, and the proposition came back with the consent to give a mortgage on the property at Brodhead, with notes corresponding, drawing 10 per cent. After a little revision in the proposition sent by Richardson through Lakin, we then sent word back to Richardson to accept this security and give the required terms.

Q. Who did you have this talk with at Troy?

A Mr. Wager & Fales, or both of them; principally with Mr. Wager.

295 Q. This proposition that you made to Richardson—who was that talked over by, you and Wager or Wager & Fales?

A. Wager and myself.

Q. How did you come to see Mr. Lakin in regard to this matter at all; had you any authority to act?

A. I had the full authority to do so.

Q. Full authority to do what?

A. To close that matter up as I thought best.

Q. Why was it not closed up at that time, if any reason?

A. It was simply a proposition of mine in July, to be taken under consideration by Lakin.

Q. Did Lakin give any reason for not paying at the time you was there in July?

A. Yes, sir.

Q. What was it?

A. That the goods were not disposed of. The stoves were not disposed of.

Q. What stoves?

A. The stoves that he purchased of Wager & Fales.

Q. Where were the stoves then?

A. The stoves were at Brodhead. They had been conditionally disposed of, but he had not realized anything on the stoves yet—much of anything.

Q. He gave that as an excuse?

A. That was one reason why; and another reason why for not consu'mating that mortgage, he wanted to consult with his friends.

Q. When was that bill incurred?

A. I think in 1867. I think the first item was in 1867.

Q. Did you sell him any more goods subsequently?

A. Yes.

Q. Was there anything said about selling goods at this time—toward the end of July?

A. Yes; we talked that thing over.

Q. What was it?

296 A. I advised him to go back again in the stove business, as I thought that that was a very important part of the business. He told me that he thought he should do so; that he always had regretted that he disposed of his interest in stoves, in other words, that he gave Spaulding & Brown the right to sell stoves on his floor; that he could have made more money himself than he had by allowing them to sell the stoves. He should go back into the stove business again very soon. I told him he had better do so then, and I would sell him a bill of stoves to any amount that he wanted.

Q. Mr. Johnson, how did Mr. Lakin's condition, as represented by him at that time, in 1869, compare with his condition as represented at the time you sold him these goods?

A. I think he represented himself, at that time, in 1869, stronger than he was in 1868 by several thousand dollars.

Q. How did his condition, as you learned it from others in 1869, at the time this mortgage was given, compare with his condition as represented by others when you sold him those goods originally.

A. I considered him stronger in 1869 than he was at any time previous to that, so much so that I would have sold him from three to five thousand dollars worth of goods on time—the usual credit.

Q. From all you know or heard concerning him, what did you consider his condition in July, 1869, and December 15, 1869, pecuniarily?

A. I consider' him able to pay his indebtedness, and responsible for all he required to carry on his trade.

Q. What did you regard him as worth?

297 A. I regarded him as worth from ten to fifteen thousand dollars, according to statements made by himself.

Q. Saying nothing about his debts. How do you mean?

A. According to statements made by himself, and by observation, clear of all his debts.

Q. Both in December and July, 1869?

A. Yes, sir.

Q. Had you known his condition as it now appears to be, in July or any time in 1869, would you have proposed this mortgage?

A. No, sir; I would not.

Q. Why not?

A. I should not have considered the mortgage good for anything, knowing as I do the conditions of the bankrupt law.

Cross-examination:

Q. When did you first know Leonard Lakin?

A. I think I have been acquainted with him eight years; would not say positively—about that time.

Q. Had he been a large customer of the defendant, Wager & Fales?

A. Pretty large for that town.

Q. What amount of goods did he purchase of the mortgagee in 1867?

A. I cannot tell you, Mr. Finch, about that. I would have to refer to books to find out that. My memory does not serve me, and I would have to look over books. I think it was a pretty large amount, but I would not say how large.

Q. Do you recollect the amount he purchased in 1868?

A. I cannot tell you. I could only tell by reference.

Q. Was not the entire amount for which you asked security in July, 1869, sold in the year 1867?

298 A. It is my impression it was; I think so, to my best recollection. Those dates I want you to make allowance for; I can't call them to my mind.

Q. You said you were at Brodhead in July, 1869?

A. Yes, sir.

Q. About what time in July, 1869?

A. That I cannot tell exactly.

Q. Did Mr. Lakin at that time refuse to give a mortgage?

A. No; he did not.

Q. What did he say about not giving a mortgage at that time?

A. He said he would take the matter under consideration, and talk with Mr. Richardson.

Q. Was there at that time a mortgage on that property to his father-in-law?

A. No, sir; I don't know; there might have been. He did not tell me so; I did not ask him.

Q. Do you know now the fact that there was a mortgage to his father-in-law on the same property?

A. Only by hearsay. I never saw it.

Q. Did Mr. Lakin at this time, in July, 1869, state to you the amount of his indebtedness?

A. I think he did.

Q. What amount did he state to you he was owing at that time?

A. I cannot recollect. I think he stated the amount of his indebtedness, and I can't recollect what it was.

Q. Did he state to you how and in what way he had incurred that indebtedness, or for what?

A. Yes. He said building his store. It cost him considerable money.

Q. Do you recollect what he said it cost him?

A. No, sir; I don't know that he told me. If he did, I don't recollect it.

299 Q. Did he state to you that he was owing anything for goods purchased at that time?

A. Yes, I think he did.

Q. How much did he say he was owing for goods purchased?

A. Well, that I caunot answer, Mr. Finch; I don't recollect.

Q. Did he state to you at that time whether any of his indebtedness was past due?

A. Yes; I think he did.

Q. How much of it did he say was past due?

A. Well, he did not say that.

Q. Did he say whether any of his indebtedness for goods purchased was past due?

A. Oh yes. I knew it without his saying so; ours was past due.

Q. How long past due was your account at the date of this conversation, July, 1869?

A. Some time; I cannot tell. It was created in 1867, I believe.

Q. Do you know on what length of time the original credit for the goods that was sold him by the mortgagee was?

A. I sold him all the goods.

Q. On how much time?

A. All the goods that w*as* bought, four months. Some time in the war we shortened our credit, but I think it was four or six months' purchase.

Q. Did you have a conversation with him in the year 1867 in relation to the account?

A. Yes; I had a conversation with him about it.

Q. Did you have any conversation with him in 1867 in relation to pay or security on the account?

A. No; I don't know as I did. I always made a settlement every year when I went there.

Q. How was it in 1867?

A. How was that settlement—how do you mean?

300 Q. Did you have a settlement in the year 1867 for the goods that were sold in 1867?

A. I think I must have done so.

Q. Do you know anything about a note having been returned to Mr. Leonard for $474.24 on November first, 1867?

A. No; I do'nt know anything about it.

Q. You don't know what the note was given for, nor when given?

A. I don't know anything about that. I don't keep the books.

Q. You talked over every year with Mr. Lakin this account, didn't you?

A. Oh, yes.

Q. What did you talk about?

A. We talked about payment of the account.

Q. You didn't get your pay, did you?

A. We got some during that time.

Q. How much did you get on the account, for the goods that were sold in 1867, for the year 1868?

A. I cannot answer that; I don't know.

Q. Was not your talk with Lakin at these times when you saw him each year in reference to getting pay or security for the debt?

A. No. I don't know as we talked particularly about security. I went there every year to sell goods.

Q. Did you talk then with him about pay on the account?

A. Oh yes, certainly.

Q. Why did you allow the debt to lay so long without pay or security?

A. For the reason that it is a custom among stovemen to be very lenient with their customers, particularly Wager & Fales.

Q. You was asking him every year for pay?

A. Oh yes.

Q. Wager & Fales wanted their money?

301 A. Oh, yes.

Q. They would have taken it if they got it?

A. Oh, they never refuse to take it from any customer.

Q. Did Wager & Fales want to make an investment of this account out here at 10 per cent. interest?

A. Well, yes. That was the conditions upon which the mortgage was given.

Q. If that was so, why was you soliciting him every year for the payment of the debt, and not talking to him about security?

A. I was dunning all our customers from year to year; not only Mr. Lakin, but all our customers.

Q. Your object in dunning Mr. Lakin was to get the pay for his indebtedness?

A. Certainly.

Q. Then you did not want to make an investment out here at 10 per cent. if you could get your pay?

A. Why money is always more desirable in business, Mr. Finch. We can use it to better advantage if we have it in our business, than to loan it out at 10 per cent.

Q. Every year you was dunning Mr. Lakin for this debt, was you not?

A. Yes.

Q. You were urging him to pay, were you not?

A. Yes, sir.

Q. Why didn't he pay it?

A. Because trade was rather dull at Brodhead; crops were short some years.

Q. Was there, then, any other reason for allowing the debt to lay so long without pay or security?

A. Yes, there was. The friendship that we had for Mr. Lakin was one thing.

Q. Was it not because you could not get your pay or security from Mr. Lakin?

302 A. We never asked for security. We never urged them; was simply there for perhaps an hour, and gave him just an ordinary dunning.

Q. Why did you ask for security at all?

A. For the reason that—one reason was, that the firm of Wager & Fales was closing up their matters, and Mr. Wager was desirous of closing up that account with the other matters.

Q. When was it that Mr. Wager manifested this desire to close up this account by taking security?

A. I don't know as Mr. Wager ever suggested in the outset of taking security.

Q. Why was this security taken at the time it was taken?

A. It was simply taken to square up the account—to close up the account.

Q. What do you mean, to close up the account?

A. To secure it.

Q. You believed at the time that Mr. Lakin was perfectly responsible?

A. I did.

Q. Then if you believed that he was perfectly responsible at this time, why was it that you took the mortgage as security for the debt?

A. One reason was, the debt was a large one. Another reason was, Mr. Lakin wanted time. And another reason was, that we felt friendly toward Mr. Lakin, and we thought that if we could aid him, or rather I thought so, why we would do it.

Q. Couldn't you do all that without this security?

A. It would not be a business-like way to let it remain an open account.

Q. Hadn't it remained an open account from 1867?

A. Yes, it had.

Q. What was there in December, 1869, that should make you want to secure this debt at that time?

303 A. For the reason that he had not the ready money to pay it, that was one reason; and another reason, as I have already given, that is, *he* wanted to close up our old matters and put them in some shape, and Mr. Wager wanted to close up his old matters of Wager & Fales, and I thought it was a more business-like way, and beside the mortgage would draw us ten per cent.

Q. Did you know at this time that there was a prior mortgage on the premises to the father-in-law of Mr. Lakin?

A. No. I never knew that; oh, yes, I knew at the time it was given that there was this mortgage.

Q. What, then, was your principal object in giving this time and taking this security?

A. Well, as I have already said, there *is* several principal reasons why: one is, I have already stated friendship, and to put the matter in a business-like shape.

Q. If that was your object, and your sole object, why didn't you press him to the giving of a mortgage in July?

A. Well, because I was in a hurry when I was there. I only remained there one train. I was on my way to visit all our customers.

Q. Was anything done by the mortgagees or their agent either in the way of obtaining payment or getting it secured from July until Dec. 15?

A. That I cannot answer you. I was not at home.

Q. You had nothing to do with the accounts between those dates?

A. Yes, I had indirectly something to do with it.

Q. What had you indirectly to do with it?

A. To keep the matter in my mind's eye, and to look after it, &c.

304 Q. Did you make any attempt from July, 1869, until the 15 December, 1869, to close up the account, as you termed it, in a business-like way?

A. Yes, I did.

Q. What did you do?

A. I suggested different plans of closing it up.

Q. To whom?

A. To Mr. Wager & Fales.

Q. Do you know of any correspondence having passed between Messrs. Wager & Fales and Lakin from July to December in relation to this account?

A. Yes, I think I saw some correspondence in that time, but I don't know what it is. I cannot repeat any of it.

Q. Did you examine the books of Mr. Lakin at this time in July?

A. No, sir; not particularly. I did not go into the full particulars of them.

Q. Did you examine his books at all in the year 1869?

A. Not particularly. He might have opened his ledger and shown me his account, &c., but I did not make any examination.

Q. Was not the principal object which you had in view in taking this mortgage to secure the payment of the debt?

A. No, sir; not directly. It was to put the debt in a shape that we were perfectly satisfied with it, and could afford to give him time on it.

Q. Were you satisfied before you took the security with the situation of things?

A. Well, not fully so, because we thought he was pretty slow in paying.

Q. You wanted security for the debt, didn't you, Mr. Johnson?

305 A. In the first place, I was fully satisfied in my mind that he ought to have time; and if *and if* I thought he wanted it, he had better give us a mortgage, and that would close it all up, and he could have the time.

Q. What was it that satisfied you that he should have time?

A. From the nature of our customers all over the country and their condition.

Q. Was not it the fact that his account had been running for 2 years, and that you had not received anything for the entire year 1869, one of the circumstances that led you to ask for security for this debt?

A. The reasons that led us to ask was, simply, because he asked the time; that was the principal reason; we would rather not let it remain in notes after we had to wait that time; that was the answer I made to him. I told him the notes would be too long to take.

Q. Did you finally consum'ate the arrangement with him?

A. No, sir; I did not.

Q. Did he make a proposition to you to give this mortgage; and if so, when did he make the proposition, and how did he make it?

A. He made it through Mr. Richardson, finally; we talked over the details in July. He then didn't accept nor decline.

Q. Did you then leave the matter with Mr. Richardson?

A. No; we didn't leave the papers with him. I talked with him about it during that time, probably, as much as I talked with Mr. Lakin.

Q. When and by whom was the matter put into Mr. Richardson's hands?

A. By myself and my partners.

Q. When?

306 A. I cannot recollect the exact time.

Q. About what time, as near as you can?

A. I cannot tell.

Q. Was it a week or ten days before the mortgage was given, or longer time?

A. Longer.

Q. What time was it, as near as you can state, that you put the matter into the hands of Mr. Richardson?

A. I cannot tell that, when it was.

Re-direct examination.

Q. You say you went to see Mr. Lakin, as you went to see all your other customers that year?

A. Yes.

Q. How much did that firm have standing out that year—Wagner & Fales & Co.?

A. In 1869?

Q. Yes.

A. From one hundred to one hundred and fifty thousand dollars.

Q. How was Mr. Lakin's account, his meeting his payments; how did that compare with the others?

A. It compared favorably.

Q. Did the fact of your regarding Mr. Lakin as responsible, as you

have stated, have anything to do with your letting the matter run as long as you did?

A. Yes; it did have a great deal to do with it.

Q. From whom did you learn of this Hayner mortgage on the same store?

A. I think I learned it from Mr. Richardson.

Q. When was that?

A. I don't know.

Q. When you were east?

A. Yes.

307 Q. Before or after this one was given?

A. I think before or—before.

BENJAMIN F. JOHNSON.

Subscribed and sworn to before me this 20th day of July, 1870.

FRANCIS BLOODGOOD,
U. S. Com. E. Dist. Wis.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, Francis Bloodgood, a commissioner duly appointed by the circuit court of the United States for the E. district of Wisconsin under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed Feb'y 20, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the judicial courts of the United States," passed Sept. 24, 1789, do hereby certify that the reason for taking the foregoing deposition is the stipulation between the parties referring it to me to take the same, and the voluntary appearance of the parties before me; that said deposition was taken down in short-hand in my presence and that of said witness, as given by said witness, partly by myself and partly by a stenographer, Charles F. Jones, my clerk.

I further certify that I was attended by the parties or their counsel at the time and place as stated in the caption of said deposition,

308 and by the said witness; and that the said witness, being of sound mind and lawful age, was, before the commencement of the taking of his deposition, by me duly and publicly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; and that the deposition as given was reduced to writing by Charles F. Jones, my clerk, a disinterested person, by copying the short-hand minutes as taken as aforesaid, in presence of said witness, and from his statements; and that the said deposition, when completed, was carefully read over to said witness, and subscribed by him in my presence and in the presence of such of the parties and counsel in the said cause as were in attendance.

And I further certify that in the caption and body of the said deposition is contained a complete record of all the proceedings before me at the time of the taking of the same, and that I have retained the said deposition in my possession for the purpose of delivering the same with my own hand to the district court of the eastern district of Wisconsin, the court for which the same was taken.

And I do further certify that I am not of counsel or attorney for

either of the parties in the caption of said deposition named, nor in anywise interested in the event of said cause.

In testimony whereof I have hereunto set my hand this 20th day of July, A. D. 1870, and of the independence of America the 95th.

FRANCIS BLOODGOOD,
U. S. Commissioner, E. Dist. Wis.

309 *James Wager.*

In the United States district court for the district of Wisconsin.

IN THE MATTER OF AUGUSTUS O. HALL, assignee of the estate of Leonard Lakin, bankrupt,
ag't
JAMES WAGER AND ANDREW B. FALES, mortgagees. } In bankruptcy.

NORTHERN DISTRICT OF NEW YORK,
Rensselaer County, ss:

At Troy, in said district, on the 31st day of May, 1870, before Mr. Harvey J. King, register in bankruptcy. For plaintiff, H. M. Finch; for defendant, Beach & Smith.

JAMES WAGER, being duly sworn and examined, says:

By Mr. Smith:

Q. Where do you reside?
A. I reside in the town of Watervliet, Albany County.
Q. What is your business?
A. Manufacturer of stoves.
Q. What is the firm name?
A. Wager, Fales & Company.
Q. Composed of whom?
A. Of myself, Andrew B. Fales, Benjamin F. Johnson. Johnson don't appear really in this.
Q. He has no interest in this account?
A. No, sir.
Q. Where do you carry on your business?
A. Our store is located at 275 River street, Troy; our foundary in Albany Co.
Q. Do you know Leonard Lakin?
310 A. Yes, sir.
Q. Where does he reside?
A. Brodhead, Wisconsin.
Q. Have you had dealings with him?
A. We have.
Q. Had an account against him?
A. Yes, sir.
Q. For what?
A. Stoves and wares.
Q. Have you a statement of the account?
A. I have a statement here. (Produces same.)
(Paper marked "Exhibit No. 1, May 31, 1870, H. J. King, register.")
Q. You and Fales were the predecessors of the present firm?

A. Yes, sir.
Q. And that account accrued in favor of you and Mr. Fales?
A. Yes, sir.
Q. You sold to Lakin?
A. Yes, sir.
Q. The goods mentioned in that statement?
A. Yes, sir.
Q. At the dates therein specified?
A. Yes, sir.
Q. There is a note mentioned there returned; what is the history of it?
A. It was a note that we held and never used it, and returned it to him and charged it into the account.
Q. Returned it before maturity or by arrangement with him; it was never dishonored?
A. No, sir; it was never dishonored; we returned it by arrangement.
Q. Have you ever received any security for that debt?
A. It was adjusted the 15th of December, '69, by six promissory notes, secured by a mortgage on real estate.
Q. What time were the notes payable?
311 A. The notes were given dated December, 15, 1869; six months $600, at 10 per cent. interest per annum; second note 12 months, $600; third, 16 months, $600; fourth, 20 months, $600; and the fifth, two years, $600. I say there is only five notes instead of six; I meant to have said five instead of six promissory notes.
Q. All at 10 per cent. interest?
A. Yes, sir.
Q. Where was the real estate situated covered by the mortgage?
A. At Brodhead, Wisconsin.
Q. At the time these notes were given and the mortgage executed, what was your opinion with reference to the solvency or insolvency of Lakin.
A. I supposed Lakin worth many thousand dollars over and above his liabilities; 15 or 20 thousand dollars above liabilities; that was my impression from what I could learn here. We had a young man we formerly sent into that section of the country, and he reported favorably of him.
Q. Had you ever heard any intimation that he was embarrassed?
A. No, sir; none at all; never.
Q. What was your principal object in giving this time and taking this security?
A. Our principal object was we realized 10 per cent. interest upon the claim, and it was at that section of country we also saved the taxes upon that amount; we are not usually taxed upon it; it made it virtually better than 10 per cent. to us.
Q. What was the legal rate of interest in New York?
A. Seven per cent.
Q. When did you receive the first intimation that he (Lakin) was embarrassed?
A. On or about the 10th of January, '70.
Q. How did that information reach you?
312 A. By letter from Lakin with a statement stating that—well a statement conveying the idea that he wished to effect some arrangement with his creditors, or something like that; printed statement; I don't exactly understand it.

Cross-examination by H. M. Finch:

Q. Mr. Wager, you were not a' Brodhead when this mortgage was taken?

A. No, sir.

Q. You acted for your firm in taking the mortgage?

A. R. J. Richardson, of Janesville, Wisconsin.

Q. He is a resident of Janesville?

A. Yes, sir.

Q. Resided there for a number of years, has he not?

A. Yes, sir.

Q. Formerly a merchant there; do you know?

A. Yes, sir.

Q. The first item on your Exhibit No. 1 is $17.62, March 12; was that a bill of goods sold at that time, or a balance of account?

A. I should judge it was goods; it is so marked upon the bill.

Q. What was the usual credit given by your firm to Larkin, purchaser of goods?

A. I think some of the first was something over 4 months.

Q. Was there any arrangement between Lakin and your firm that he was to pay interest on any portion of the purchase after maturity?

A. Yes, sir.

Q. That was the arrangement?

A. Yes, sir; that was the arrangement.

Q. That arrangement was made at the time he purchased the goods?

A. Well, I am not positive that it was expressly stated previous, although I think the remark was made, as near as I can remember, that we charged interest after maturity.

313 Q. Was it the understanding with Lakin that he was to have an indefinite credit on the sale of those goods on the consideration of his paying 10 per cent.?

A. He didn't pay 10 per cent. on the goods; we only charged 7 per cent. on the goods till the security was given.

Q. Prior to March 12, 1867, was Lakin indebted to your firm at all?

A. I think he was; I think that note was given for a balance of an account due at that time.

Q. That balanced up the account?

A. Up to a certain time; (looking at statement) I should rather think it was.

Q. The first item of merchandise probably which you sold him is June 13th, 1867?

A. I think the first item was $17.62. The note finally charged afterwards was given previously, I think. I don't recollect now particularly, but my impressions are that that note was something had previous to the opening of that account.

Q. Take the item of $2,237.03. On what length of time were they originally sold?

A. I should judge 4 months.

Q. He has paid nothing upon that sale, has he?

A. We have received some money. It is credited there, (referring to statement.)

Q. He has paid nothing except as appears upon the Exhibit?

A. I think that is all. I think when he sent us that $500 we gave him credit for that and charged him back that note.

Q. The last item, as you make out, (if I understand your account,) of goods you sold is January 16th, '68, is 20 cents.

A. Yes, sir; a little piece of casting, probably.

Q. The great bulk of this indebtedness was contracted in the year 1867, was it not?

A. Yes, sir.

314 Q. Now, when did you say that you had the settlement with Lakin for this account that he owes you?

A. The mortgage is dated December 15, '69; the settlement was arranged some time previous, I think, by Richardson, at Janesville. How long previous I am not able to say, sir.

Q. Did you ever have any correspondence with Richardson in relation to settling this claim?

A. There was a very little written, I think; we merely requested him to adjust that claim with Lakin.

Q. You gave Richardson full authority to settle the claim?

A. Yes, sir. He then wrote us that he could get such a mortgage and 10 per cent. interest, and we replied, take it.

Q. Prior to this settlement, what interest had Lakin been paying you?

A. My impressions are, nothing to exceed 7 per cent.

Q. Who first suggested the giving of this mortgage?

A. Something of the kind was talked over in the early summer of '69 with our Mr. Johnson, who was then at Brodhead. He came home and said he had had a talk with Lakin about taking a mortgage.

Q. Did he give a statement about the condition of this claim?

A. Yes, sir; a verbal statement.

Q. This was when?

A. Along in the early summer of '69—I think in June.

Q. Was Lakin at that time asking for time on this account?

A. Well, he did ask for some time, I think.

Q. What reason did he urge why he wanted time?

A. I don't know *as* I understand particularly the reasons, unless it was he had been building, or something to that effect, and rather slow collecting.

Q. He had been building what?

A. A store, I think.

315 Q. Did he state to you or your firm or to Mr. Johnson, as Mr. Johnson represented it to your firm, the amount of indebtedness he had contracted in the building of that store?

A. I don't recollect particularly the amount.

Q. It is a very unusual le'gth of time to allow a purchase to run, from '67?

A. Well, it is; but we have got a good many longer. We indulge our customers.

Q. Was it Lakin's proposition to secure this debt to your firm by this mortgage, or was it a proposition made by your firm or some one representing your firm to take the mortgage?

A. There was something said about giving the mortgage by our Mr. Johnson; that, I think, was intimated to Mr. Richardson, at Janesville, that he had proposed something of that kind in the early summer previous, and we should have no objections, provided we could receive 10 per cent. interest. We were willing to indulge him some time longer.

Q. When did you finally authorize Richardson to close up the transaction of taking the mortgage?

A. Sometime in November, '69; I think in the early part of November.

Q. Did you give him written instructions?

A. I think we wrote him requesting him to adjust that claim, and if he could get a mortgage at 10 per cent., to take it.

Q. Did you receive a letter from Richardson that he had taken the mortgage?

A. I can't say whether we did or not. I know we received a mortgage.

Q. Do you know from whom you received it?

A. I do not. I rather think it came through Richardson to us. I am not positive.

Q. Between the time that you had the first conversation *and* the summer of '69, in relation to the taking of this security, till the time it was taken, did you have correspondence with Lakin?

A. I think some.

316 Q. Have you those letters here?

A. I think we have some of them.

Q. Will you produce them? (Witness does so.)

Q. Did you have any communication from Lakin after this letter of July 9th, '69?

A. I am not positive.

Q. What is your best recollection about it, Mr. Wager?

A. I can't say. My correspondence is mostly done by Mr. Fales; he would understand that more effectually than myself.

Q. Who fixed the le'gth of time that the notes secured by the mortgage were to run?

A. I think it was decided by our Mr. Johnson and Mr. Richardson.

Q. Have you any letters from Richardson in relation to the transaction, written at or about the time the mortgage was executed?

A. My impressions are that there was something written, but we wrote him, I think, giving him full power to adjust it, and I am not positive whether we have any of his letters or not.

Q. Will you make an examination to see whether you have or not?

A. I can do that by going to the office.

Q. If you find them, will you bring them to the commissioner and have them attached to your deposition, and, if not, have the facts stated that you cannot find them?

A. Yes, sir.

Q. Personally you know nothing of the transaction?

A. I know nothing more than the mortgage coming with the notes; I examined those.

(Letters bearing the following dates were respectively marked by the register as Exhibits 2, 3, 4, 5, 6, 7, 8; Feb. 1, 1868; Nov. 23, 1868; July 9, 1869; Feb'y 21, 1868; March 4, 1869; November 30, 1869; Dec. 16, 1869.)

JAMES WAGER.

Subscribed and sworn to before me, May 31, 1870.

H. J. KING, *Register, &c.*

317 *A. B. Fales.*

ANDREW B. FALES, being duly sworn and examined, says:

By Mr. Smith:

Q. You heard the testimony of Wager?

A. I have; yes sir.

Q. This debt from Lakin *from Lakin* to you and Wager was credited as he states?

A. Yes, sir.

Q. And the amount stated in the exhibit presented was due to you from Lakin at the time the mortgage and notes were given?

A. It was.

Q. Down to that time what was your idea in regard to the solvency or insolvency of Leonard Lakin?

A. From all I could learn of him, I supposed he was worth from $10,000 to $20,000 over and above his liabilities.

Q. Had you ever, till that time the notes were given or the mortgage, had any suspicion or intimation that he was embarrassed in his circumstances?

A. No, sir; I had not.

Q. When did you first learn that he was embarrassed or insolvent?

A. Sometime in January, I think it was.

Q. What year?

A. January, 1870.

Q. What was your principal object in extending the time of the payment of this debt, and taking the mortgage?

A. Well, by taking that course, we received 10 per cent. interest, and made the account perfectly safe; at the same time it accommodated him. He is a man I have known a good while, and a man I felt very friendly towards, because I supposed he was a very honest, reliable man.

Q. You considered it a good investment?

A. Yes, sir.

318 Q. That was the only purpose you had in extending the time of payment, and taking the security?

A. Yes, sir.

Q. There is an item of $100 on this exhibit; what was that for?

A. Well, the notes were made at $600 each, and left a balance. I was told by some one, I don't remember who, that he claimed that there was not quite $100 due, and he would settle that seperate, and make the amount even and settle the other seperately; he claimed that it was a little less than $100, and he would adjust that seperately.

Q. That the account was too much?

A. That the balance due was not quite $100, and that he would settle it seperately.

Cross-examination by H. M. Finch:

Q. Mr. Fales, were you ever at Brodhead, Wisconsin?

A. No, sir; I never was; I may have been through there on the cars; I never stopped there to do business.

Q. How long had your firm done business with Leonard Lakin prior to March 12, '67?

A. I can't tell without referring to our books. A number of years, I think, previous to that.

Q. Did you sell to him any of the goods in question?

A. Yes, sir; I think I did.

Q. Did he, at the time of that sale, make any statement or representation to you of his pecuniary condition?

A. He spoke of it.

Q. At the time of the sale of June 13, of $2,237.03, did he give you any statement of his affairs?

A. I cannot be positive in regard to that.

Q. About that time?

319 A. He has when he has been here; I don't recollect whether he was here at that time or not.

Q. Did he give that statement to you in detail?

A. No, sir; a mere general statement of his affairs; that he was doing a fine business at that; he was making money.

Q. It was partially on the faith of those representations that you sold him those goods?

A. It was partly on that; we had heard from other parties, and he had previously dealt with us.

Q. Had he ever bought as large a bill of goods as that of June 13th?

A. He has bought some pretty good-sized bills; I can't tell the size without referring back.

Q. These sales that were made, of which this exhibit is a statement, were made on what length of time?

A. I think it was 4 months.

Q. Starting with the letters, Feb'y 1st, '68, is this the first correspondence you had with Lakin in relation to the settlement of this account?

A. Well, I don't know; I think it is; I cannot be positive in regard to it.

Q. There may be other letters that you have not produced here?

A. Well, I looked for them but I did not find any previous letters.

Q. These were all the letters you could find from him from the 1st of February up to and including July 9th?

A. Well, I found one or two other letters in regard to the purchase of a bill for the church there; those I laid out, because I supposed they had nothing to do with this matter.

Q. What was the character of the goods generally which you sold him?

A. Stoves.

Q. Mostly stoves, weren't they?

320 A. Yes, sir.

Q. In fact was there anything but stoves, and the trimmings?

A. Stoves and hollow ware, I think, mostly.

Q. Do you know of his having made purchases from any other house except your house in the year 1867?

A. Well, my impressions are that he did.

Q. You don't know?

A. I am not positive, but I think he bought some stoves of one or two parties here.

Q. He bought no goods of you in '68 at all, did he, except this item of 20 cents?

A. That is all, I believe, as it appears there, sir.

Q. During the whole year of '68, have you had no more correspondence with him in relation to this matter than appears in these letters?

A. The most of our business has not been in the way of correspondence; our agent has been there two or three times and called upon him; we have no correspondence to show for it.

Q. You wrote to him quite frequently, after this term of credit expired, for the payment of the goods?

A. We wrote occasionally, as those letters will show.

Q. You were quite persistent, were you not, in your demands upon him to settle this matter?

A. No, sir; I think we have been very dilatory in the matter.

Q. Trying to force him up to settle?

A. Well, we asked him to remit, of course; we have been very lenient with him.

Q. You have sent parties to him?

A. Oour agent has been there to see him.

Q. What excuse did Lakin give you for not paying anything more upon these purchases than he has paid here, as appears by the exhibits?

A. Those letters will explain that.

321 Q. This is the only explanation he gave you?

A. They will explain what he told our agent.

Q. What did he tell your agent, as your agent reported to you, as to the reason why he didn't pay this bill?

A. He reported that he had a large amount standing out; that he had been building a store, believe, &c.

Q. Did he say how much that store had cost him?

A. I don't remember that he did. He may have done so, but I don't remember the amount.

Q. Do you know, as a matter of fact, either from Lakin's statement to you, or from the agent' statement to you, the amount he expended in building the store?

A. I don't know the amount.

Q. Didn't you know that that store really embarrassed him—the building of that store was the great cause of embarrassment to him in his business?

A. He never wrote to us in that way. He wrote to us he had ample means to pay as soon as he could collect.

Q. When did you first know he had commenced to build this store?

A. I don't remember.

Q. Did you know when he had completed the store?

A. I can't say at present.

Q. Did he complete it in the year '69?

A. I should think he had previous to that, but I don't know now. I don't remember.

Q. Did you reply to this letter of the 9th of July, '69?

A. I don't remember. I think the letters were mostly, or at least some of them, were replies to our letters.

Q. Do I understand you to say that, since the 9th of July, '69, your firm has had no correspondence with Lakin?

A. I can't say whether we had or not.

322 Q. Have you looked your letters through, to see whether you had or not?

A. Yes, sir; I have looked.

Q. You find no other letter after the date of the 9th of July?

A. I found those letters about the bill, but I can't say what date they were.

Q. But no letters in relation to the account of your firm against Lakin, after the letter of the 9th of July?

A. I think none; none that I am aware of. I am not aware of any.

Q. You were anxious to make an investment out West at 10 per cent.?

A. We were satisfied with such an investment.

Q. Why didn't you close the matter right up in the month of July, '69?

A. Well, I suppose I should, if I had been out there myself.

Q. I suppose your firm would not have hesitated to take the money in July, '69, if he had paid it?

A. It is customary, I believe, for all firms to take money when they can—even lawyers.

Q. You would not have been so anxious for an investment at the West at 10 per cent.? You would have declined taking the money in July, '69?

A. Well, probably not.

Q. As a matter of fact, Mr. Fales, was not the principal object that you had to secure this debt?

A. The principal object was to take those notes, supposing that they would be paid at maturity, and accommodate our friend. I knew him when a young man in Troy. I was a poor clerk myself on the opposite side of the street from where he was, and I always felt very friendly towards him; and, from all I could learn, he was making money
323 and doing first rate, and he asked this as a favor, and I was very much inclined to grant it. If it was for twice the number of months or years, I should have given it to him, if he had asked it. This secured the debt, and, of course, secured our 10 per cent. interest.

Q. You gave, by this settlement, 6, 12, 16, and 20 months, and two years, didn't you?

A. Yes, sir; I think so.

Q. Prior to the taking of this security, what information had you, and from whom, in relation to the condition of Leonard Lakin?

A. Well, we had statements from him, which I believe to be true, and also from our agent, who had called upon him.

Q. Your agent, Mr. Johnson?

A. Yes, sir.

Q. When was the last statement which you had from Lakin, either verbal or written?

A. I don't remember.

Q. State, as near as you can, when the last statement was that you had from him.

A. I think the letter of July 9th was the last. I am not positive. I think after that our agent called upon him, and we got further information from him, (the agent.)

Q. What statement did your agent make to you after July 9th, and before the taking of this security, in relation to Lakin's condition?

A. He investigated the matter there, and he got statements, and stated to us that he thought Lakin was worth from ten to twenty thousand dollars over and above his liabilities.

Q. Did he give you the details of how Lakin figured himself to be worth eight to ten thousand dollars over and above his liabilities?

A. No, sir; he didn't give me the details in regard to it.

Q. Did he give you the amount of Lakin's liabilities?

324 A. I don't remember whether he did or not. I don't hardly think he did.

Q. What did he give you as showing Lakin's condition?

A. As I tell you, he had been out there and investigated the matter thoroughly, as he thought, and I thought he was worth, as near as I could learn, from ten to twenty thousand dollars.

Q. In that investigation didn't he ascertain the amount of Lakin's liabilities?

A. He may have done so, but I don't remember his speaking of it to me particularly. If the statement had been less favorable, I presume I would have known more about it, because I would have made more enquiry into the affair; but as I supposed he was perfectly responsible, I did not treasure it up much.

Q. Who else did you get information from in reference to Lakin's condition?

A. I don't remember now. I have enquired from time to time of people from that section that I knew knew him; but I don't know as I could give the names of any person.

Q. What details did they give you?
A. They always gave a very favorable report of him.
Q. What did they say?
A. They recommended him very highly, and that he was doing a very fine business, and that he was making money there.
Q. What did they say as to his liabilities?
A. I don't think they made a full statement in regard to his affairs.
Q. Anything in relation to his property?
A. No, sir; no detailed statement.
Q. In other words, it was a mere general statement that he appeared to be doing well, and had the reputation of doing well?
325 A. That's what they believe'.
Q. The basis of that belief they did not give you?
A. No, sir. I don't remember any particular statement that they made.
Q. You don't remember that your agent, Johnson, gave you any items?
A. I think he gave me some, but I cannot remember the particulars.
Q. What are the items that you can recollect?
A. I don't remember particularly about it, because the report was so favorable that I didn't give it much thought.
Q. Where is Johnson now?
A. He is somewhere about Chicago, I think.
Q. Did Richardson ever make any report to you of the condition of Lakin?
A. I don't remember that he ever has.
Q. At whose suggestion did you send out the claim to Richardson to settle it?
A. Mr. Johnson was out there with the claim, and he left it with him. I don't know whether the arrangement was made with Johnson or Richardson, or the two. He left it with Richardson, and he was to settle with Mr. Richardson.
Q. When was Johnson out there last before the claim was put in Richardson's hands?
A. In the summer of '69.
Q. Was it in the month of July?
A. I should think it was September or October—somewhere along there. I should think September or October, '69.
Q. Now in July, '69, Lakin asked to be excused from giving this mortgage?
A. This letter shows that he did, I believe.
Q. Did your firm answer that letter?
A. I don't know. I can't say whether we did or not.
326 Q. Did you ever have any correspondence after that date in relation to giving the security?
A. My impressions are, it was all done through Mr. Johnson. I can't say.
Q. Mr. Johnson did all the talking and investigation from that date?
A. Yes, sir.
Q. Was Mr. Johnson there at any time between July and September or October?
A. I don't know whether he was or not; he was west, but time he went there I could not be positive.
Q. Have you given me now all the sources of information which you had in the latter part of the year 1869 as to the pecuniary condition or circumstances of Leonard Lakin?
A. I think I have, sir.

Q. Did Richardson write you or correspond with you at all as to the terms of the credit that was to be given to Lakin?

A. We had a letter from him after the papers were given to him?

Q. But before the receiving of the mortgage by him, as your agent, did he have any correspondence with you as to the time that was to be given to Lakin?

A. I don't remember that he did. As I said before, I think that arrangement was made with Johnson, in regard to the time.

Q. When was that arrangement made with Johnson?

A. While he was west. He went away still earlier in the month, and was out there till September or October.

Q. Was it at that time, whatever time it was, that Johnson made the arrangement to give this time, provided he gave the security?

A. He made the arrangement while he was out there.

Q. Are you sure whether it was September or October?

327 A. I should rather think it was earlier in the season, but I am not sure. I should not think it was any later than October.

Q. It is possible you may be mistaken in regard to that.

A. I think not.

Q. Do you say that Johnson had agreed upon all the terms with Lakin in the month of October, fixing the length of credit?

A. I don't say he saw them in October. It was when he was west.

Q. Whatever time it was, did Johnson at that time make the final arrangement as to the length of credit he was to have—the security he was to give?

A. He and Mr. Richardson made the arrangement. I cannot say whether it was one or both of them.

Q. If Mr. Johnson was out there and attending to the claim, why did you put it into Richardson's hands?

A. That was Mr. Johnson's doings. He put that claim into his hands. Whether he left it there, or whether it was when he went back there, I could not state.

Q. Have you the printed statement which Lakin sent you?

A. I don't know. We have a printed statement, I believe; but I don't recollect where it is at present.

Q. Do you recollect what he showed in that statement his liabilities to be?

A. No, sir.

Q. Do you recollect what he showed his assets to be?

A. I do not.

Q. Was it a bankruptcy notice, or was it a notice from Lakin direct?

A. I think it was a bankruptcy notice. Whether it came from him or not, I could not say.

328 Q. Did you comply with the request of Lakin in his letter of March 4, 1869, in which he requested you to send statement of his account to that date, and several notes running as long a time as you can afford to let them, "and I will stamp, sign, and return to you?"

A. No, sir. I think it was about that time Johnson was going west, and the account was taken out by Johnson.

Q. You didn't reply to that letter of Lakin's at all then?

A. I couldn't say whether I did or not. We never sent the notes out as he expressed.

Q. For what reason did you not reply at that time with the request which he made?

A. Johnson was going out there; he probably left within a few weeks of that time, and we preferred to leave it until he went out there to adjust it.

Q. Can you give any good reason why your firm did not take this security in the month of July or August—why you waited till November, '69, if you were making a 10 per cent. investment out there?

A. I think Johnson told me, on his return, that Lakin offerred him the security at time, with interest, but only 7 per cent. interest, and that he would not accept the mortgage. I think that was the conversation.

Q. Then your negotiations, from July up to the time you took this security, was to get this additional 3 per cent., was it?

A. It was left with Mr. Johnson and Mr. Richardson. Lakin, as you will see in his letter, is proposing to pay from time to time, and it was reasonable to suppose that he expected to pay more than the account shows he did pay. He paid some remittances on the account.

329 Q. The total amount he paid in 1869, as it appears by the statement, is only $400, is it not?

A. He has paid since the account was due, $1,100.

Q. How much in 1869, I say?

A. He has paid on the account $1,100.

Q. How about 1869?

A. The statement shows what he has paid.

Q. It is only $400?

A. Yes, sir.

Q. Now, what rate of interest was this account drawing?

A. Seven per cent. after the account was due.

Q. So that you let the account run from 1867 till the 15th of December, 1869, with interest at 7 per cent. only?

A. The account shows how it run.

Q. I come back to the question, Mr. Fales, what was really the principal object you had in taking this mortgage, if it was not to secure this debt?

A. Well, it was to accom'odate Lakin, as I said before, to give him extra time. He wanted the money in his business, as was represented.

Q. As to the real estate upon which the mortgage was given, you had no knowledge of its value except as reported to you by Richardson or Johnson, I suppose?

A. Well, I have had some conversation with Lakin in regard to its value, previous.

Q. When?

Q. When he was here.

Q. What time?

A. I can't say; it was the last time he was here.

Q. When was it?

A. I think it was in '67 or '68; I am not positive which.

Q. Now, was your firm consulted at all prior to the giving of these notes and the mortgage, as to the length of time Lakin was to have in case he gave the security?

330 A. I don't remember particularly about that.

Q. Did you have any difficulty about arranging with Lakin as to the length of time he was to have?

A. I don't remember as to that.

Q. Was it his proposition to put these notes at the length of time they are put?

A. I think it was. I think he wanted extra time to give him the money in his business. I think it was his wish to arrange it in that way.

Q. So as to have the money in his business?

A. Yes, sir.

Q. Mr. Fales, is it true that your agent closed up this transaction upon this length of time upon this kind of security, without correspondence or communication with your firm?

A. I think that we knew something about the length of time. I think that the proposition came from Lakin, and it was accepted.

Q. Did you assent to it at once?

A. I don't remember as to that.

Q. Did you have any correspondence at all with any party in relation to the length of time?

A. Not with Lakin, I don't think.

Q. What is your best recollection about it?

A. I think that Johnson reported to us—he or Mr. Richardson may have reported to us something as regards the time, to know whether we would accept it or not, but still I am not positive in regard to it.

Q. Didn't you consider it a very long time?

A. No, sir.

Q. You didn't?

A. No, sir; been in the habit of letting accounts run as long as that.

Q. Generally?

A. Not generally, but it often occurs.

Q. Under what circumstances?

A. If the parties are responsible, we sometimes make it longer than that.

331 Q. Do you mean to say that if you had considered Leonard Lakin perfectly responsible and able to pay, that you would have given him the length of time which you have given, for the additional three per cent. interest?

A. Yes, sir; I would have given to him very readily—the friendship I had for him. I would have been very glad to have accom'odated him.

Q. Did your firm assent to the first proposition as to time?

A. I don't remember in regard to that. I think, however, the proposition was made in July. I think it must have been made in July, and it was not accepted at once.

Q. Why not?

A. Well, because Mr. Johnson, I suppose, thought he hadn't instructions to settle it. I don't know any other reason. It was in hands.

Q. Your instructions to Mr. Johnson in relation to this claim all verbal, or were they partly verbal and partly in writing?

A. I could not say. I think they were verbal.

Q. You instructed him in a general way to get security for the debt?

A. I don't remember as to that. I presume not. I presume if we had, he would have had the security in July, the time he writes that letter.

(Witness here produces two letters.)

Q. Those two letters, (one dated Nov. 30, 1869, and the other December 16, 1869, signed R. J. Richardson,) were letters received by your firm in relation to the settlement of the debt against Leonard Lakin?

(Letters marked "7" and "8.")

Q. Are those the only two letters you had from Mr. Richardson?

A. Those were the only two I could find. I looked my letters to find others, but that is all I could find?

332 ANDREW B. FALES.

Subscribed and sworn to before me, May 31, 1870.

HARVEY J. KING,
Register in Bankruptcy.

Ex. N. 1.— 1, *H. J. King, register.—Statement.*

TROY, N. Y., *May 31st*, 1870.

Mr. Leonard Lakin to Wager and Fales, Dr.

Net cash.

1867. OFFICE AND SALES-ROOM, No. 275 River St.

March	12.	To merchandise	17 62
June	13.	" "	2,237 03
Aug.	29.	" "	1,050 28
Oct.	29.	" "	7 28
Nov.	1.	1 note returned	474 24
"	1.	Interest on above	7 73
Dec.	14.	To m'd'se	13 25
1868.			
Jan.	16.	" "	20
			3,807 63
		Interest, Dec. 15, '69	392 37
			4,200 00

1869.

Oct.	30.	By cash			500		
June	30, '68.	" "			200		
"	19, '69.	" "			200		
July	8, '69.	" "			200		
Dec.	15.	" 1 note,	on or before	6 mos.,	600	Secured by mortgage on real estate.	
"		" 1 note,	on or before	12 "	600	Secured by mortgage on real estate.	
"		" 1 note,	on or before	16 "	600	Secured by mortgage on real estate.	
"		" 1 note		20 "	600	Secured by mortgage on real estate.	
"		" 1 "		2 years	600	Secured by mortgage on real estate.	4,100 00
							$100 00

333 EXHIBIT No. 2.—*H. J. King, reg., &c.*

[Leonard Lakin, dealer in hardware, agricultural implements, iron, steel, nails, cutlery, in connection with Spaulding & Brown's stove and tinware establishment.]

BRODHEAD, WIS., *Feb'y* 1, 1868.

Mess. WAGER & FALES.

DEAR SIR: I hope you will not get entirely out of patience with me or loose confidence in me. This is the worse winter to make collections I ever knew. Farmers have plenty of produce on hand, but will not sell at present prices, therefore money is not plenty here at present. I have a good stock of goods, in a good brick store, well insured, and am in a better and safer condition than ever before. Please reply, and let me know how you feel toward me in this matter, &c.

Most respectfully,

LEONARD LAKIN.

(Endorsed:) L. Lakin. Feb'y 1, 1869.

EXHIBIT No. 3.—*H. J. King, register, &c.*

[Leonard Lakin, dealer in hardware, iron, cutlery, stoves, & agricultural implements.]

BRODHEAD, WIS., *Feb'y 21st*, 1868.

Messrs. WAGER & FALES.

I should replied to your statement before this but I have been in hopes from day to day of making you a remittance. I will do so just as soon as possible. I now have on hand 4,500 dollars' worth of stoves; therefore I hope you will be as patient with me as possible. You shall have every dollar your due as soon as I can pay it. I also have 6,000 due me
334 on book acc't & notes, which I am making every effort to collect as fast as possible. Please reply, & oblige.

Yours, respectfully,

LEONARD LAKIN.

(Endorsed:) "L. Lakin. Feb'y 21, 1868."

EXHIBIT No. 4.—*H. J. King, reg., &c.*

[Leonard Lakin, dealer in hardware, agricultural implements, iron, steel, nails, cutlery, in connection with Spaulding & Brown's stove and tinware establishment.]

BRODHEAD, WIS., *Nov.* 23, 1868.

Messrs. WAGER & FALES.

DEAR SIRS: Your statement and letter is at hand. In reply I wish to ask further indulgence of you. You have as you say waited very patiently for your pay and I expected to *of* given most of it to you before this, but for several reasons I have not been able to collect half the money I ought to. And therefore I have not by you as I wish to or as I ought to. I will pay you every dollar I owe you, with interest, and will do so as soon as possible but I hope you will be able to indulge me still longer. Please reply and let me know what you will do by me it the matter, and oblige.

I have plenty of assets to a good deal more than meet all my debts. All I ask is time. Please accept thanks for past favors, and believe me your friend. My kind regards to Mr. Johnson.

Most respectfully,

LEONARD LAKIN.

EXHIBIT No. 5.—*H. J. King, reg., &c.*

[Leonard Lakin, dealer in hardware, agricultural implements, iron, steel, nails, cutlery, in connection with Spaulding & Brown's stove and tinware establishment.]

335 BRODHEAD, WIS., *March 4th*, 1869.

Messrs. WAGER & FALES.

DEAR SIR: Your letter of Feb'y 25th is at hand & contents noted. I wish to ask another favor of you; that is that you send me a statement of my account to this time, & several notes running as long a time as you can afford to let them, & I will stamp, sign, and return them to you, and will do my best to meet them when due. I hope you will grant this favor, and greatly oblige.

With kind regards, I am, most respectfully,

LEONARD LAKIN.

(Endorsed:) L. Lakin. March 4, '69.

EXHIBIT No. 6.—*H. J. King, reg., &c.*

[Desirable real estate for sale. Leonard Lakin, dealer in hardware, agricultural implements iron, steel, nails, cutlery, &c., in connection with Spaulding & Brown's stove and tinware establishment.]

BRODHEAD, WISCONSIN, *July* 9, 1869.

Messrs. WAGER & FALES.

DEAR SIRS: Mr. Johnson has been here and insisted upon my giving a mortgage to secure the account I owe you. I have not refused to give it, but I ask as a favor that you excuse me from so doing. I am sure that it would injure me very materially. I assure you that I am responsible for all I owe. I never was in so sound a condition as at the present time. Fire would be the worst calamity that could befal' me, and then my insurance money would more than pay my debts. You shall have every dollar I owe you, with interest. I know if you un-
336 derstand my position as I do myself you would not ask for the mortgage on my store.

Thanking you for past favors and indulgences, and asking this one in addition, I remain most respectfully,

LEONARD LAKIN.

Please reply.

(Endorsed:) Leonard Lakin. July 9, '69.

EXHIBIT No. 7.—*H. J. King, reg., &c.*

OFFICE OF DODY MANUFACTURING COMPANY,
Janesville, Wis., Nov. 30, 1869.

Messrs. W. F. & Co.

GENTS: Yours at hand. On the receipt of your statement of account with Leonard Lakin & Hall, I wrote Lakin. He came in to see me. We came to an arrangement as follows: Lakin's notes, six hundred each, at 6, 12, 18, 24, & 30 months from date of statement, 10 p'r c't secured by mortgage on store and two vacant lots adjoining. As additional security, Lakin was to turn out six hundred doll's of his customers' paper that was now due or to become due within the six months so as to be sure and meet the 1st note; and after that was paid to turn out six hundred more of his customers' paper for the next note, and so on till all paid. The store and real estate Lakin says is worth 11,000 doll's. I think it would sell for 7,000 at forced sale. He is to have it insured for 2,500 for my own benefit. It is now mortgaged to his father-in-law for 3,200 at two, three, and four years. This mortgage does not cover the two vacant lots. It is now some weeks since I saw Lakin. He took
337 the papers home with him, and was to send me abstract of the property and all the papers, but has not done so. I have written him to say that things must remain as they are until I hear from you. Write me at once. All well but Evelyn. She gets on slowly.

Yours,

R. J. RICHARDSON.

(Endorsed:) R. J. Richardson. Nov. 30, 1869.

EXHIBIT No. 8.—*H. J. King, reg., &c.*

SECRETARY'S OFFICE OF THE SOUTHERN WISCONSIN
STATE AGRICULTURAL AND MECHANICAL SOCIETY,
Janesville, Wis., Dec. 16, '69.

WAGER & FALES & CO.

GENTS: I promised to write you on Monday, but did not do so, for I have naught to write, nor have I anything new now; I spent the day yesterday with Lakin; have arranged all the details, and will have to note security as soon as it can be got through the mill. It will take a day or two to get abstracts, policies, and mortgage. We had to go Monroe for all papers, as that is the county-seat. Will send them to you as soon as perfected. All well; expect Mrs. Smith to-morrow.

Yours,

R. J. RICHARDSON.

(Endorsed:) R. J. Richardson. Dec. 1, '69.

338 United States district court, northern district of New York, ss:

I, Harvey J. King, the register before whom the foregoing testimony was taken, do hereby certify that James Wager and Andrew B. Fales, the witnesses, attended before me on this 31st day of May, A. D. 1870, and being first duly sworn and examined, testified as hereinafter s't forth.

That Levi Smith, esq., attended as counsel for said Wager and Fales, and H. M. Finch, esq., of Milwaukee, Wisconsin, attorney for Augustus O. Hall, assignee of Leonard Lakin.

Dated June 1, 1870.

HARVEY J. KING,
Register in Bankruptcy.

339 UNITED STATES OF AMERICA,
Western district of Wisconsin, ss:

[L. S.] The President of the United States of America to Harvey J. King and Charles F. Taylor, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you, or any one or more of you, are invested with full power and authority to examine James Wager and Theodore F. Spencer, on their corporal oath as witnesses, in a cause depending in the circuit court of the United States for the western district of Wisconsin, wherein Augustus O. Hall, assignee of the estate of Leonard Lakin, bankrupt, plaintiff, and James Wager, Andrew B. Fales and Leonard Lakin, are defendants, on the part of the def'ts Wager & Fales, upon the interrogatories annexed to this commission, and therefore you are hereby commanded that you, or any one or more of you, at certain days and places to be appointed by you for that purpose, do cause the said James Wager and Theodore F. Spencer to come before you, and then and there examine them on oath upon the said interrogatories; and that you take such examination and reduce the same into writing, and return the same annexed to this writ, closed up under your seal, or the seals of any one or more of you, into the said circuit court of the United States before the judge thereof, with all convenient speed.

Witness, the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of Madison, in said district, this 23d day of May, in the year of our Lord one thousand

eight hundred and seventy-one, and of the independence of the United States the ninety-fifth.

FRANK M. STEWART, *Clerk.*

The execution of the within commission appears by the schedules hereto annexed.

Dated May 30, 1871.

HARVEY J. KING,
CH. F. TAYLOR,
Commissioners.

340 *James Wager.*

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
ag't
JAMES WAGER, ANDREW B. FALES, & LEONARD Lakin, defendants.

Interrogatories to be propounded to James Wager, one of said defendants, of or in the vicinity of the city of Troy, in the county of Rensselaer, in the State of New York, a witness to be produced & sworn and examined under and by virtue of a commission to be issued in the above-entitled cause, and annexed hereto, directed to Harvey J. King, of the city of Troy, in the county of Rens'*eal*er, in the State of New York, and such other commissioner as may be named by the plaintiff (if any) as commissioner on behalf of the said defendants James Wager and Andrew B. Fales.

First interrogatory. What is your name, age, occupation, and place of residence, and how long have you resided where you now do?

Second interrogatory. Are you acquainted with the parties to this cause, or either, and which of them, and how long have you been acquainted with them, or either, and which of them, and where did you and they respect*ful*ly reside at the time?

Third interrogatory. Are you acquainted with a Mrs. Gale or a
341 Mrs. A. E. Gale, of Sandusky, in the State of Ohio? If yea, then state whether or not she is in any way related to you, and how related, and whether or not she had a store in said Sandusky, in November, 1869; and, if she had, then state what, if any kind of business was at the time carried on in such store, and were you in said Sandusky or said store at any time in the year 1869, and especially in the month of November, 1869.

Fourth interrogatory. If, in answer to the third direct interrogatory, you say that you were at the store of Mrs. Gale, in Sandusky, in or about the month of November, 1869, then state whether you, while there, saw or became acquainted with Isaac F. Mack, jr.; and, if so, how did you come to see him or become acquainted with him, and did you have any conversation with him; and, if so, when and where was it, and who, if any one, was present, and about how long did the conversation last, and what was it about.

Fifth interrogatory. If, in answer to the last interrogatory, you say you did have a conversation with Isaac F. Mack, jr., and that said conversation, or a portion thereof, was in regard to the defendant, Leonard Lakin, or his responsibility, then state whether any one heard said con-

versation, or any and what part, and how much thereof, and what was the name of the person who heard the same. Did the said Isaac F. Mack, jr., say in that conversation that he regarded Mr. Lakin as perfectly honest, but so heavily involved that it would be a close
342 question whether he ever worked out of it, or anything in substance like that? Did you inform Mr. Isaac F. Mack, jr., or any other person at that or any other time, that Mr. Lakin was owing you quite an amount, and had been putting off the payment from time to time, and that you had made up your mind that he, Lakin, was insolvent, or anything in substance like that, or any part thereof? Did you and Mr. Isaac F. Mack, jr., differ or *disguise* in regard to Mr. Lakin's solvency; and if so, how and in what did the difference or disagreement consist? Did Mr. Isaac Mack, jr., say that he had heard from several of his, Lakin's, acquaintances, that Mr. Lakin was about ready to fail, or anything in substance like that? Did you say that you believed you were better informed in regard to Mr. Lakin's condition than he (Mr. Mack) was, or anything in substance like that? Did you say that you believed he (Lakin) would fail in a very short time, or anything in substance like that? Did you say that of Mr. Lakin was owing him (Mr. Mack) anything, that he (Mr. Mack) had better get it secured, or anything in substance like that? Did you say that you should send a man out to Brodhead, Wisconsin, and should get your matters straightened up, and if Mr. Lakin had any property upon which you could get security, you should get a mortgage to secure your claims against him, (Lakin,) or anything in substance like that, or any part thereof?

Sixth interrogatory. Give the whole of said conversation in detail.

343 Lastly. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

CASSODAY, MERRILL & DIXON,
Att'ys for Defendants, James Wager and Andrew B. Fales.

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
against
JAMES WAGER, ANDREW B. FALES, AND Leonard Lakin, defendants.

T. F. Spencer.

Interrogatories to be propounded to Theodore F. Spencer, now of or in the vicinity of the city of Troy, in the county of Rensselaer, in the State of New York, a witness to be produced, sworn, and examined under and by virtue of a commission to be issued in the above-entitled cause, and annexed hereto, directed to Harvey J. King, esq., of the city of Troy, in the county of Rens'alaer, State of New York, and such other commissioner as may be named by the plaintiff (if any) as commissioner on behalf of the said defendants, James Wager and Andrew B. Fales.

First interrogatory. What is your name, age, occupation, and
344 place of residence, and how long have you resided where you now do?

Second interrogatory. Are you acquainted with the parties to this cause, or either, and which of them, and how long have you been acquainted with them or either, and which of them, and where did you and they respectively reside at the time?

Third interrogatory. Were you in November, 1869, or about that time, acquainted with a Mrs. Gale or a Mrs. A. E. Gale, of Sandusky, in the State of Ohio? If yea, then state whether you were in any way connected with her in business at the time, or whether you did any business for her at the time, and state how connected and what business? Were you, in or about November, 1869, acquainted with Isaac F. Mack, jr., of Sandusky aforesaid? If yea, and if you have stated that you know the defendant, James Wager, then state whether you heard any conversation between the said James Wager and the said Isaac F. Mack, jr., in or about November, 1869, and if you did, then state, if you know, how they came to have such conversation, and how they became acquainted, and what was the conversation about, and about how long did it continue, and where were you during the time, and where was the conversation, and were you present during said conversation, and did you hear the same or any part thereof, and how much and what part thereof, and were you present during all the time until they seperated?

345 Fourth interrogatory. Did the said Isaac F. Mack, jr., say in that conversation or any other that he regarded Mr. Lakin as perfectly honest, but so heavily involved that it would be a close question whether he ever worked out of it, or anything in substance like that or any part thereof; and, if so, which part? Did the said James Wager say in that conversation, or any other, that Mr. Lakin was owing him, Wager, or Wager and Fales, quite an amount, and had been putting off the payment from time to time, and that he (the said James Wager) had made up his mind that he (Lakin) was insolvent, or anything in substance like that or any part thereof, and if a part, then what part thereof? Did the said James Wager and the said Isaac F. Mack, jr., disagree in regard to Mr. Lakin's solvency? And, if so, how and in what did the disagreement consist? Did the said Isaac F. Mack, jr., say that he (Mack) had heard from several of his (Lakin's) acquaintances that Mr. Lakin was about ready to fail, or anything in substance like that? Did the said James Wager say that he (Wager) believed that he (Wager) was better informed in regard to Mr. Lakin's condition than he (Mr. Mack) was, or anything in substance like that? Did the said James Wager say that he (Wager) believed that he (Lakin) would fail in a very short time, or anything in substance like that? Did the said James Wager say that if Mr. Lakin was owing him (Mack) anything, that he (Mr. Mack) had better get it secured, or anything in substance like it? Did the said James Wager say that he (Wager) should send a man out to Brodhead, Wis-

346 consin, and should get his (Wager's) matters straightened up and if Mr. Lakin has any property upon which he (Wager) could get security, he (Wager) should get a mortgage to secure claim against him, (Lakin,) or anything in substance like that, or any part thereof?

Fifth interrogatory. Give the whole of the conversation which you heard between the said Isaac F. Mack, jr., and the said James Wager in detail.

Lastly. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this

your examination, or the matters in question in this cause? If you set forth the same fully and at large in your answer.

CASSODAY, MERRILL AND DIXON,
Attorneys for defendants, Wager and Fales.

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff.
ag't
JAMES WAGER, ANDREW B. FALES, AND LEONard Lakin, defendants.

347 Testimony of James Wager and Theodore F. Spencer, taken before Harvey J. King and Charles F. Faber, commissioners named in the annexed commission and under and in pursuance of the said commissions, at the city of Troy, in the State of New York, on the 29th day of May, in the year 1871.

James Wager.

JAMES WAGER, the first witness named in the annexed commission, being first duly sworn by one of the commission, according to the rules annexed to said commission, testified as follows:

To the first interrogatory said witness says: My name is James Wager; age fifty-eight years; reside in the town of Watervliet, in the county of Albany and State of New York, and have resided there about sixteen years.—(HARVEY J. KING, CHA'S F. FABER, *Commission.*)

To the second interrogatory the witness answers: I am not acquainted with the plaintiff. I am acquainted with Leonard Lakin—have known him some seven or eight years; and with Andrew B. Fales—have known him at least twenty years; they being the defendants with myself. The defendant Lakin resided at Brodhead, in the State of Wisconsin, during my acquaintance with him, and the defendants Fales resided at the city of Troy, N. Y., during my acquaintance with him, and resides where I now do, and previous thereto at said city of Troy.

To the third interrogatory the witness answers: I am acquainted with Mrs. A. E. Gale of Sandusky, in the State of Ohio; she is related to me; her husband was a brother of my wife; he is now not living.

348 She had a store in said Sandusky in November, 1869, in which she carried on the business of selling stoves and house-furnishing goods, agricultural implements, and gas-fittings. I was in Sandusky, and in said store, in the year 1869, in the month of November.

To the fourth interrogatory the witness answers: I did, while in Sandusky, as stated in my answer to the third interrogatory, see and become acquainted with Isaac F. Mack, jr. I was introduced to him by Theadore F. Spencer, who is a brother of Mrs. Gale, while in said store. I had a conversation with said Mack. It was in said store at the time I was introduced to him. Mr. Theadore F. Spencer was present during most of the time of the conversation, if not all of it. The conversation lasted from eight to twelve minutes. It was firstly about our stoves, particularly about one of our make of stoves then in Mrs. Gale's store, and as to having purchased one of our make of stoves, himself, of Mr. Lakin at Brodhead, Wisconsin; also as to his publishing a paper, while a resident at Brodhead, Wisconsin, and publishing in said paper the good

Second interrogatory. Are you acquainted with the parties to this cause, or either, and which of them, and how long have you been acquainted with them or either, and which of them, and where did you and they respectively reside at the time?

Third interrogatory. Were you in November, 1869, or about that time, acquainted with a Mrs. Gale or a Mrs. A. E. Gale, of Sandusky, in the State of Ohio? If yea, then state whether you were in any way connected with her in business at the time, or whether you did any business for her at the time, and state how connected and what business? Were you, in or about November, 1869, acquainted with Isaac F. Mack, jr., of Sandusky aforesaid? If yea, and if you have stated that you know the defendant, James Wager, then state whether you heard any conversation between the said James Wager and the said Isaac F. Mack, jr., in or about November, 1869, and if you did, then state, if you know, how they came to have such conversation, and how they became acquainted, and what was the conversation about, and about how long did it continue, and where were you during the time, and where was the conversation, and were you present during said conversation, and did you hear the same or any part thereof, and how much and what part thereof, and were you present during all the time until they seperated?

345 Fourth interrogatory. Did the said Isaac F. Mack, jr., say in that conversation or any other that he regarded Mr. Lakin as perfectly honest, but so heavily involved that it would be a close question whether he ever worked out of it, or anything in substance like that or any part thereof; and, if so, which part? Did the said James Wager say in that conversation, or any other, that Mr. Lakin was owing him, Wager, or Wager and Fales, quite an amount, and had been putting off the payment from time to time, and that he (the said James Wager) had made up his mind that he (Lakin) was insolvent, or anything in substance like that or any part thereof, and if a part, then what part thereof? Did the said James Wager and the said Isaac F. Mack, jr., disagree in regard to Mr. Lakin's solvency? And, if so, how and in what did the disagreement consist? Did the said Isaac F. Mack, jr., say that he (Mack) had heard from several of his (Lakin's) acquaintances that Mr. Lakin was about ready to fail, or anything in substance like that? Did the said James Wager say that he (Wager) believed that he (Wager) was better informed in regard to Mr. Lakin's condition than he (Mr. Mack) was, or anything in substance like that? Did the said James Wager say that he (Wager) believed that he (Lakin) would fail in a very short time, or anything in substance like that? Did the said James Wager say that if Mr. Lakin was owing him (Mack) anything, that he (Mr. Mack) had better get it secured, or anything in substance like it? Did the said James Wager say that he (Wager) should send a man out to Brodhead, Wis-

346 consin, and should get his (Wager's) matters straightened up and if Mr. Lakin has any property upon which he (Wager) could get security, he (Wager) should get a mortgage to secure claim against him, (Lakin,) or anything in substance like that, or any part thereof?

Fifth interrogatory. Give the whole of the conversation which you heard between the said Isaac F. Mack, jr., and the said James Wager in detail.

Lastly. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this

your examination, or the matters in question in this cause? If you set forth the same fully and at large in your answer.

CASSODAY, MERRILL AND DIXON,
Attorneys for defendants, Wager and Fales.

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff.
ag't
JAMES WAGER, ANDREW B. FALES, AND LEONARD LAKIN, defendants.

347 Testimony of James Wager and Theodore F. Spencer, taken before Harvey J. King and Charles F. Faber, commissioners named in the annexed commission and under and in pursuance of the said commissions, at the city of Troy, in the State of New York, on the 29th day of May, in the year 1871.

James Wager.

JAMES WAGER, the first witness named in the annexed commission, being first duly sworn by one of the commission, according to the rules annexed to said commission, testified as follows:

To the first interrogatory said witness says: My name is James Wager; age fifty-eight years; reside in the town of Watervliet, in the county of Albany and State of New York, and have resided there about sixteen years.—(HARVEY J. KING, CHA'S F. FABER, *Commission.*)

To the second interrogatory the witness answers: I am not acquainted with the plaintiff. I am acquainted with Leonard Lakin—have known him some seven or eight years; and with Andrew B. Fales—have known him at least twenty years; they being the defendants with myself. The defendant Lakin resided at Brodhead, in the State of Wisconsin, during my acquaintance with him, and the defendants Fales resided at the city of Troy, N. Y., during my acquaintance with him, and resides where I now do, and previous thereto at said city of Troy.

To the third interrogatory the witness answers: I am acquainted with Mrs. A. E. Gale of Sandusky, in the State of Ohio; she is related to me; her husband was a brother of my wife; he is now not living.

348 She had a store in said Sandusky in November, 1869, in which she carried on the business of selling stoves and house-furnishing goods, agricultural implements, and gas-fittings. I was in Sandusky, and in said store, in the year 1869, in the month of November.

To the fourth interrogatory the witness answers: I did, while at Sandusky, as stated in my answer to the third interrogatory, see and become acquainted with Isaac F. Mack, jr. I was introduced to him by Theodore F. Spencer, who is a brother of Mrs. Gale, while in said store. I had a conversation with said Mack. It was in said store at the time I was introduced to him. Mr. Theodore F. Spencer was present during most of the time of the conversation, if not all of it. The conversation lasted from eight to twelve minutes. It was firstly about our stoves, particularly about one of our make of stoves then in Mrs. Gale's store, and as to having purchased one of our make of stoves, himself, of Mr. Lakin at Brodhead, Wisconsin; also as to his publishing a paper, while a resident at Brodhead, Wisconsin, and publishing in said paper the good

qualities of our stoves for Mr. Lakin, and of his then wanting one of our stoves, and asked me to advertise in his paper which he was then publishing at Sandusky, and something was said as to Mr. Lakin's business.

To the fifth interrogatory the witness answers: I am quite sure Theodore F. Spencer heard my conversation with Lakin, the most of it, I don't know but all of it; he was in the store all the time. I have no recollection that said Mack, in this conversation, said anything about Mr. Lakin's honesty. I think he said something about Mr. Lakin's being involved, and said he doubted his ability to meet his liabilities.

He asked me the question if Mr. Lakin was indebted to our house.
349 My reply was that he owed us, and that we looked upon him as perfectly solvent. I did not indicate or say anything of the kind that said Lakin was insolvent, or that I had so made up my mind, or anything in substance like that *that* or any part thereof. We disagreed in regard to Lakin's solvency. He thought it was doubtful whether Lakin would be able to meet his liabilities, and I considered him perfectly responsible and able to meet his liabilities; that our house had perfect confidence in him. Mack didn't say that he had heard from several of Lakin's acquaintances that Lakin was about ready to fail, or anything in substance that. I didn't say I believed I was better informed in regard to Mr. Lakin's condition than Mack was, or anything in substance like that. I didn't say that I believed that he (Lakin) would fail in a very short time, nor anything in substance like that. I didn't say, if Lakin was owing Mack anything, that he better get it secured, or anything like that, or in substance like it. I did not say that I would send a man out to Brodhead, Wisconsin, and should get my matters straightened up, and, if Lakin had any property upon which I could get security, I would get a mortgage to secure our claim against him, or anything in substance like that, or any part thereof.—(HARVEY J. KING, CHA'S F. TABER, *Commission.*)

To the sixth interrogatory the witness answers: After Spencer gave me an introdcution to Mack our conversation in substance was, he made a remark that he had been looking at our stoves in Mrs. Gale's store, *in Mrs. Gale's store*, and was pleased with it, and would like one, and invited me to advertise our goods in his paper published at Sandusky.

I replied that we did not advertise our goods. He said formerly,
350. while residing at Brodhead, Wisconsin, I became acquainted somewhat with your goods. I used one of your stoves in my house obtained from Mr. Leonard Lakin, and I also mentioned the good qualities of your stoves for Mr. Lakin at Brodhead, Wisconsin, where I formerly resided & published a paper. He asked me if we were then trading with Mr. Lakin. I replied we had been until he sold out his stove business. He asked me if Mr. Lakin was indebted to our house. I replied he was. He then asked what I thought of Mr. Lakin's responsibility. I told him I considered Mr. Lakin perfectly responsible. He replied, Mr. Lakin is indebted to me, and I have doubts of his ability to meet his engagements. I told him that I considered Mr. Lakin perfectly responsible, for he owned a large amount of real estate, also a large amount of personal property, and our house looked upon him as perfectly solvent, so much so that we had accommodated Mr. Lakin whenever he wished it, or something to that effect. I also said, my partner, Mr. Fales, had been acquainted with Mr. Lakin much longer than I had; and that Mr. Fales had the utmost confidence in Mr. Lakin's ability; that Mr. Lakin was an honest, worthy man, and I believed he would pay his liabilities. He replied that he was glad to hear that our

opinion was so favorable of Mr. Lakin. That was in substance all the conversation we had.—(HARVEY J. KING, CHA'S F. TABER, *Commissioners.*)

To the last interrogatory the witness answers: That he knows nothing further touching the matters inquired of.

JAMES WAGER.

351 *T. F. Spencer.*

THEODORE F. SPENCER, the second witness named in the annexed commission, being first duly sworn by one of the commissioners according to the rules annexed to said commissioner, testified as follows:

To the first interrogatory said witness says: My name is Theodore F. Spencer. My age is twenty-five years. My occupation is clerk in a hardware store. My place of residence, in Sandusky, Erie County, Ohio. I have resided there about three years and a half.

To the second interrogatory the witness says: I do not know the plaintiff. I do know the defendants Wager and Fales, but not the defendant Lakin. I have been acquainted with Mr. Wager three years, and Mr. Fales about one year. I resided at Sandusky, Ohio, when I became acquainted with Wager & Fales, and they resided where they now do, Mr. Wager, in Watervliet, and Mr. Fales in Troy, N. Y.

To the third interrogatory the witness says: In November, 1869, I was acquainted with Mrs. A. E. Gale, of Sandusky, in the State of Ohio. I was connected with her as a clerk for her at that time conducting the business for her in her store at Sandusky. I was also acquainted, at that time, with I. F. Mack, jr., of Sandusky. I heard a conversation between the said James Wager and the said Mack in or about November, 1869. I introduced Mr. Mack to Mr. Wager at that time at the request of said Mack. The conversation was relative to stoves. It lasted, I should think, about ten minutes. Mr. Mack also
352 spoke of advertising the stoves of Wager & Fales' make in his newspaper, or a newspaper with which he was in some way connected. He spoke of having before that time advertised said stoves at some place in Wisconsin where he had previously lived. He also said that he had himself had one Wager & Fales' stoves while in Wisconsin, and he wanted one like the one in our store made by them, and also wanted to advertise the stoves. Mr. Wager answered him that he did not, or his firm did not, advertise their stoves in that region. There was also conversation between them about the responsibility of some stove-dealers, and Mr. Wager said that he considered the party referred to to be good. I was in Mrs. Gale's store at the time, and Mr. Wager & Mr. Mack were also there. The conversation was held there in the store, near the desk which I occupied. I was present during the whole conversation, and until Mr. Mack went out—Mr. Wager remaining.

To the fourth interrogatory, the witness says: I do not recollect that the said Mack, in that conversation, said that he regarded Mr. Lakin as perfectly honest, but so heavily involved that it would be a close question whether he ever worked out of it, or anything in substance like that, or any part thereof. I never heard any other conversation between them. I think I should recollect it if anything of that kind had been said by him. The said Wager said, in that conversation, that Mr. Lakin was owing his firm, but I did not hear him say that he had made up his mind that he (Lakin) was insolvent, or anything in substance

like that, or any part of it. If Mr. Wager had said so, I think I should recollect it. I think there was some disagreement between said
353 Wager and said Mack as to their opinion relative to the solvency of Lakin. Mack expressed a doubt as to the solvency of said Lakin and said Wager said that he considered him perfectly solvent. I didn't hear said Mack say that he had heard from several of Lakin's acquaintances, that Mr. Lakin was about ready to fail, or anything in substance like that. I think he did not say anything of that kind. I think I should have heard it if he had. I did not hear said Wager say to said Mack that he (Wager) believed that he was better informed in regard to Mr. Lakin's condition than he (Mr. Mack) was, or anything in substance like that. If he had said so, I think I should remember it. Mr. Wager did not say in that conversation that he believed that Mr. Lakin would fail in a very short time, or anything in substance like that; nor did Mr. Wager say that if Mr. Lakin was owing him (Mr. Mack) anything, he (Mr. Mack) had better get it secured, or anything in substance like that. The said Wager did not say, in that conversation, that he should send a man out to Brodhead, Wisconsin, and should get his matters straightened up, and if Mr. Lakin had any property upon which he (said Wager) could get security, he should get a mortgage to secure his claim against him, (said Lakin,) or anything in substance like that. Had Mr. Wager made such remarks, I think I should remember it.—(HARVEY J. KING, CHA'S F. TABER, *Commission.*)

Fifth. To the fifth interrogatory, the witness says: Mr. Mack said to Mr. Wager, after the introduction by me, that he had one of Wager & Fales' stoves when he lived in Wisconsin, and liked it, and advertised the same; that he had looked at one in our store, and that he
354 would like one of them, and that he would like to advertise for Wager & Fales. Mr. Wager replied that they did not advertise their stoves in that region. They then spoke of Mr. Lakin, or some man who was selling Wager & Fales' stoves somewhere in Wisconsin. The party who has been spoken of in this examination as Mr. Lakin, but whose name I do not recollect, and did not and do not intend to give, as I do not recollect it. They spoke about this party, whatever his name was, who lived in Wisconsin, and had stoves of Wager & Fales, or sold stoves for them. I heard Mr. Wager say to Mack that he considered him (the party they were talking about) perfectly responsible.—(HARVEY J. KING, CHA'S F. TABER, *Commission.*)

To the last interrogatory, the witness says, I do not.

THEODORE F. SPENCER.

To the circuit court of the United States for the western district of Wisconsin:

The undersigned, commissioners appointed by your honorable court to examine James Wager and Theodore F. Spencer, witnesses in this cause, on the interrogatories which are hereto annexed, respectfully report: That the said witnesses attended before us on the 29th day of May, 1871, and being first publicly sworn by us, and having duly sworn that the answers given by them, respectively, to the interrogatories proposed to them should be the truth, the whole truth, and nothing but the truth, were examined by us on the interrogatories *proposed to them, should be the truth, the whole truth, and nothing but the truth, were examined by us on the interrogatories* herewith returned, in the presence of Levi Smith, esq., counsel for the defendants, no one appearing for
355 the plaintiff; that the answers of the said witness' thereto are

truly stated in the accompanying deposition, signed by them respectively.

Dated May 30, 1871.

HARVEY J. KING,
CHA'S F. TABER,
Commissioners.

Fees, $20—paid by def'ts Wager & Fales.

356 *Opinion.*

In the circuit court of the United States for the western district of Wisconsin.

HALL, ASSIGNEE, &C.,
vs.
WAGER AND FALES.

This is a suit in equity brought to set aside a mortgage given by Leonard Lakin, the bankrupt, to the defendants, Wager and Fales, on the ground that it is void under the bankrupt act.

The mortgage is for $3,000.00, dated Dec. 15, 1869. It was given to secure a debt of that amount owing by Lakin to the firm of Wager and Fales for balance due for stoves sold him by them in 1867. The stoves were sold on four months' time, and the debt had been standing on account past due until the giving of this mortgage. Notes were then executed and made payable, $600 in six months, $600 in twelve, $600 in sixteen, $600 in twenty, and the balance in 24 months, with interest at ten per cent. The account against the bankrupt was, in 1867, about $4,000, and he paid in 1868 a little less than $500, and in 1869 only $200, which he paid in July. In February, 1868, he asked for an extension, and agreeing to make small payments, but none was formally given. In March, 1869, he asked for another extension, but none was given. In July, 1869, the defendants sent their agent to him for settlement and asked for a mortgage to secure it. He declined then to give it and wrote defendants, July 9, 1869, that if he gave a mortgage it would injure his credit. He agreed then to make small remittances, but did not do so, and they, in October, 1869, sent their claim to Richardson, of Janesville, to get it secured by mortgage, and on the 15th of Dec. through their agent, Richardson, they obtained the mortgage in question. In 1868, Lakin built him a new store at a cost of from $6,000 to $8,000. In 1868 he sold out his
357 stock of stoves to other parties, and gave up the stove business. That he continued to do business as a retail hardware merchant, with a tolerable fair credit at home and with his creditors, but he had not met his payments, and there was on the 15th of Dec. about $14,000 or $15,000 past due, a portion of which had been due for quite a long time. He had secured Pierce and Whaling's claim by note given by the purchasers of the stoves. He had been pressed for over a year by his creditors for their pay. He had borrowed money at banks by means of endorsers, and got renewals of the same. He had used funds held by him as treasurer and in trust, in his business, and failed to pay them over on demand.

That in August, 1869, he gave a mortgage to secure his father-in-law $3,200 borrowed money.

He was beyond all question insolvent, owed more than his property would pay, and had been so for over two years when he gave the mort-

gage to defendants, although he swears that he did not suppose that he was, but, on the contrary, that he thought he was worth $10,000 over and above all his debts. Soon after giving the mortgage his other creditors instituted an investigation into his affairs, and it was made apparent that he was insolvent. That he then attempted to compromise, but failed to accomplish it, and on the 8th of January, 1870, twenty-four days after giving the mortgage, he filed his petition in bankruptcy.

Mack, of Sandusky, Ohio, swears that Wager told him in November, 1869, that he thought Lakin insolvent, and that he intended to send out and get a mortgage to secure his claim. Wager denies that he said so, but says that Mack told him at that time that he, Mack, thought he would not stand it long, but that he told him he knew better and that he was good, and Mr. Wager is partially sustained in his version
358 by a Mr. Spencer who was present. The defendants swear that they considered him worth $10,000 or $15,000 over his debts when they took the mortgage.

These are substantially the facts in the case, and the complainant's counsel claim that they entitle the complainant to the relief asked. The defendants' counsel claim that the facts fail entirely to make out a case under the bankrupt act. He contended that to avoid the mortgage it must be shown that Lakin was insolvent when given, and that he knew it, for if he did not know that he was insolvent, he could not be said to have given the mortgage with a view to give the mortgagees a preference, which it would be necessary for the court to find as question of fact, under the 35th section of the bankrupt act, in order to avoid the mortgage.

The meaning of that part of the section is not entirely clear, and has been construed differently by the courts and judges who have been called upon to pass upon it.

But I cannot concur with the defendants' counsel in his interpretation of it. The section does not require the debtor to know his insolvency or to believe it. It treats of insolvency as a condition in fact, not of belief. He cannot set up his ignorance of that condition to defeat the operation of that section. He is presumed to know and is chargeable with knowledge of it, and neither ignorance or wilful blindness will exonerate him from the operation of its provisions, so that being insolvent in fact, and chargeable by law with knowledge of such condition, it would follow, it seems to me, as a logical sequence, that he gave the mortgage with a view to give the defendants a preference. For not having property to pay all his creditors, the giving these defendants security to pay them in full necessarily operated as a preference, and he should be held as having intended the natural and logical consequences of his acts.
359 This section of the bankrupt act is almost a literal copy of section 89 of the Massachusetts insolvent law, and their courts before its adoption by Congress had placed this construction upon it. Perhaps if the bankrupt had any reasonable cause to believe himself solvent, it might be held that he did not give the security with intent to give a preference. But treated as a rational man, and looking at the facts of his case as they really were, could Lakin reasonably have believed he was solvent? A case might arise in which a court might hold that a party had reasonable cause to believe himself solvent when he was in fact insolvent, but it would have to possess some peculiar features, and the party would have to furnish a very satisfactory excuse for the want of a knowledge of the facts showing his insolvency. This does not present such a case. From the facts of this case it don't seem possible that he could have believed himself solvent when he gave this mortgage.

The case of Jones v. Howland, 8 Met., 377, relied upon so strenuously by defendants' counsel, arose under the bankrupt act of 1841, and the supreme court of Massachusetts has not followed that as applicable to their insolvent law, from which this section of the bankrupt act of 1867, under consideration, was copied. Chief Justice Shaw, in delivering the opinion of that court in Holbrook v. Jackson et al., 7 Cush., 136, 150, says: "The provision of the bankrupt law of the United States, under which the case of Jones v. Howland et al. was decided, was very different from the present; it turned on the question of actual belief and intent, and not on reasonable ground to believe." And in the same opinion, page 149, he says: "We do not think it necessary, in order to avoid the conveyance, that the debtors knew that they were insolvent, or in fact contemplated proceedings in insolvency; it is enough that they were in
fact insolvent and had no reasonable cause to believe themselves
360 solvent." That court, again, in Vewnard v. M'Connell and others, 11 Allen, 562, says: "That the proposition cannot be sustained consistently with the established rules of law, that the payment of a debt by a party who is insolvent cannot be regarded as a preference if made with the hope and expectation of the debtor that he will be able eventually to pay all his debts in full. The adjudicated cases leave no room for doubt on this point. Thompson v. Thompson, 4 Cush. 127; Lee v. Kilburn, 3 Gray, 594; Holbrook v. Jackson, 7 Cush., 136, 149; Barnard v. Crosby, 6 Allen, 327." And in the 13 Gray, Beals v. Clark, page 21, the court say: "That the jury were rightly instructed that it was competent for them to infer, from the fact that Clark did give a preference to the plaintiff, that he intended to give it. Deming v. Dana, 2 Cush., 172."

These cases abundantly show that the courts of Massachusetts have not regarded the case of Jones v. Howland, supra, as giving a construction of their insolvent law, and I am satisfied that the U. S. courts that have attempted to adopt that as a proper construction of the provisions of our present bankrupt act, have not examined the provisions of the two bankrupt acts critically, or the insolvent law of Massachusetts, and the construction given to this section by the courts of that State, for if they had they would have seen that the provisions of the act of 1841, upon which that was made, were entirely different from the present act, and that that decision had uniformly been held there as not applicable to the provisions of their insolvent law.

The weight of authority in the Federal courts I think is largely in favor of the construction I have given to that section. 2 Chicago Legal News, 148; 3 Bankrupt Register, 101 id. 84, id. 93, id. 98, id. 29, 1st id. 81, id 146, 4 id 146.

The preferences declared void by the 2nd section of the act of
361 1841 were such as were made by a party contemplating becoming a bankrupt under the act. There the intent of the debtor was the principal question. Under the present act a preference created by a party "being insolvent" is made void, and his intent or belief is not in question. The fact of insolvency being established or admitted, the preference ordinarily as to the debtor is presumed to be void, the presumption being strong or slight, according te the circumstances of each case. But I cannot see that the fact that the debtor knew or did not know of his insolvency at the time of creating the preference, has much to do in determining the question as to him.

The purpose of the act being to enforce the equal distribution of an insolvent's estate, every act of an insolvent debtor that tends to defeat that purpose should be construed strictly as against him, and courts

should indulge every presumption that is permissable, according to well-settled rules of law, to secure the full benefit of this cardinal principle of the law. I would not go so far as to prevent the exercise of a reasonable bona-fide effort on the part of an energetic and hopeful debtor, struggling with an honest intent to pay all his debts, for it is often the case that a trader may be embarrassed and unable to pay his debts as they mature, by the exercise of judgment and unreserved frankness with his creditors, goes through, pays all, and converts what was almost a calamity into a profitable enterprise. But to allow every embarrassed debtor to thus go on, and sustain his acts because he says he thought he could go through, and hold as valid his payments and securities, would be to defeat altogether the objects and provisions of the bankrupt act.

I would not apply the strict definition of insolvency as that is usually given in commercial centres to traders doing business in smaller country places.

362 In large commercial centres a failure to meet payments as they become due is deemed insolvency, but not so in the country. The custom of traders generally is different there, and a party should be held insolvent there only when he fails to meet his debts according to the usage and custom of the place of his business.

But this laxity should not be allowed to that extent as to hold that non-payment for a long time, or continued inability for years to pay and meet obligations, should not be regarded as evidence of insolvency. I would not do away with all rule on that subject, but I would adopt a rule in harmony with the general custom of the place in which the party was engaged in business. And testing Lakin even by that rule, I hold that he must be deemed insolvent when he gave this mortgage. He had been behind in his payments for over two years. His business for that time did not yield him the money to pay up. He was urged for payment and could not pay; applied for extensions which were refused, or, if given, he failed to meet according to the new term; used trust funds in his business; borrowed money at banks, and of his neighbors and clerks, and still was behind a great way in meeting his payments. To say under such circumstances that he should not be deemed insolvent, or that he had reasonable cause to believe himself solvent, would be indulging in a laxity of business conduct and judgment entirely inconsistent with the views of business men in any community, and such as were never sanctioned by any court. To allow him any benefit of his plea of ignorance of his true condition, under the circumstances of this case, would do violence to the common intelligence of the man, and impeach his business capacity to an extent far more damaging to him than to say that he hoped by some fortunate turn of business to get out of his embarrassed situation.

363 I therefore find in this case that Lakin, when he gave this mortgage to the defendants, was solvent and that he had no reasonable cause to believe himself insolvent; that it was given to secure an existing debt; that it gave the defendants a preference over his other creditors; and that in law he should be held to have given it with a view to give them such preference. But in order to grant the relief sought by this bill, it is necessary to establish that the defendants, when they received such mortgage, "had reasonable cause to believe that Lakin was insolvent;" and "that it was made in fraud of the provisions of the bankrupt act." This last proposition, it seems to me, is a necessary conclusion from an affirmative finding upon the first. If an insolvent debtor gives a mortgage to one of his creditors, whereby he

gives him a preference over his other creditors, and the creditor receiving the security has reasonable cause to believe the debtor insolvent when he receive it, the fraud upon the act, as to both, is complete, and the last proposition, as I have said, is but a logical conclusion rather than an independent fact or proposition necessary to be found in addition to the other, except as it naturally flows therefrom.

Chief Justice Shaw, in Holbrook v. Jackson, supra, page 151, says: "It must be reasonable cause on the part of the mortgagee to believe, not actual knowledge or belief, that he (the mortgagee,) was insolvent." The section itself declares "having reasonable cause to believe," not believing, so that the question is, had they reasonable cause? Viewed in this light, the question as to what they did believe about his condition is immaterial, for if they had reasonable cause to believe he was insolvent their security is void. They could not close their eyes to the evidence of his solvency that they had before them, nor are they constituted the sole judges of the sufficiency of such evidence. That is for the court
364 to determine when the security is attacked.

Now, in this case I think the defendants had reasonable cause to believe Lakin insolvent when they received their mortgage. This is the most difficult question under the testimony to decide, but I think, in view of all the facts and circumstances, they had reasonable cause to so believe.

Their debt was over two years past due. He had been in business all the while, but had only paid in the two preceding years about $700, upon it; had sold out the stock of goods for which the account was made; had transferred a part of the paper received on that sale as collateral security to others of his creditors; had repeatedly applied for extensi'ns which had been refused; had been repeatedly dunned without success; refused in July previous to give them a mortgage as a condition of an extension; wrote them that he thought such mortgage would injure his credit; were told by Mr. Mack, in November, at Sandusky, Ohio, that he thought he could not go through. These circumstances constitute, in my mind, a reasonable cause for them to have believed he was insolvent. I have said before that such facts are evidence of insolvency, and that the law would pronounce a man thus situated as insolvent. These facts were known to defendants, and I cannot see any way of escape for them from the consequences of such knowledge.

They refused all extension without ample security, and insisted upon it, notwithstanding his remonstrance, that it would injure his credit. That was sufficient, of itself, to put them on inquiry. His fear about his credit should have put them upon inquiry, as to the situation of it, and the necessity for it; but they wholly neglected to investigate; were intent on security, purposely ignorant and blind, or meant to be, of his circumstances until after they got the security.

365 The giving of the security resulted as he thought it would. It caused an investigation into his affairs by his other creditors, which developed his insolvency, as Lakin must have known all the while it would, and as I think the defendants also had reason to think it would.

Again, their agent was at Brodhead, in June, 1869, at a time when, among the more public, prominent, and business men of the village his credit was freely canvassed in connection with the defalcation as to trust money, and it is scarcely credible that he should have been there at that time and not heard anything about it when he had so large a claim and so long past due. I therefore think the defendants had rea-

sonable cause to believe Lakin insolvent when they received this mortgage from him, and that the giving of it was a fraud upon the bankrupt act, and that it is void. And I direct a decree declaring it void, and requiring the defendants to cancel the same upon the records; and if they fail to do so for a period of thirty days from the entering of the decree in this case, that then the register of deeds of Green County, upon recording a copy of the decree in this case, enter upon the record thereof, "this mortgage, cancelled by decree of the circuit court of the United States for the western district of Wisconsin, and that the complainant recover his costs of the defendants to be taxed.

I do not think this court on this bill has a right to exclude the defendants from proving their debt. At all events, I do not feel disposed to pass upon that question in this case. The objection may be taken in the bankrupt courts if the creditors wish to exclude the claim of these defendants from participation in the distribution, and that court may allow or reject the claim as it may see fit, without reference to the result of this suit.

366 *Decree.*

Circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE, &C.,
against
JAMES WAGER, ANDREW B. FALES, AND LEONARD LAKIN.

This cause having been brought on to be heard upon the bill, answer, replication, and proof filed therein, and the same having been argued for and on behalf of complainant by Finches, Lynde and Miller, his solicitors, and for and on behalf of said defendants, by their solicitors, Cassody, Merrill and Dixon, and the court being fully advised of and concerning the several matters in the said pleadings mentioned, and upon motion of Finches, Lynde and Miller, solicitors for complainant, it is ordered, adjudged, and decreed, and the court doth order, adjudge, and decree that the mortgage mentioned and described in complainant's said bill of complaint, bearing date on or about the 15th day of December, A. D. 1869, and executed by Leonard Lakin and O. A. Lakin, his wife, to the said defendants, by the firm-name of Wager and Fales, upon the following described property, that is to say: The north one-third of lot one, (1,) in block one hundred and one; also all of lot three, (3,) in block one hundred and one; also the north half of the south half of block seventy-nine; also the east half and the southwest quarter of block two hundred and six; also all of block one hundred and forty-two; all in the town of Brodhead, county of Green, and State of Wisconsin, according to the map thereof, recorded in the office of the register of deeds in and for said county, and which said mortgage is recorded in the register's office, of said Green County, in volume "2" of mortgages, on page 607, was and is fraudulent and void, and the same is held for naught.

367 And it is further ordered, adjudged, and decreed that the said defendants, Wager and Fales, execute in due form of law a good and sufficient satisfaction and discharge of said mortgage, and deliver the same to the said complainant within thirty days from the date of this decree, or, in default thereof, that this decree stand in lieu thereof, and the same shall be of the same binding force and effect as if the discharge had been executed and delivered.

And it is further ordered that said defendants, Wager and Fales, pay the costs, taxed at the sum of one hundred and eighty-eight dollars and thirty-one cents, and that execution issue for the same.

By the court:

J. C. HOPKINS,
U. S. District Judge.

AUG. 8TH, 1871.

And from the foregoing decree the defendants, James Wager and Andrew B. Fales, prayed an appeal in open court, and at the time of pronouncing said decree, which was then and there granted and allowed them on giving bond and security, to be approved by the court, in the sum of one thousand and five hundred dollars, conditioned for their prosecuting their said appeal to effect, and answer all costs and damages if they shall fail to make good their plea, and which said appeal and order are as follows, to wit:

368 *Prayer for appeal.*

Circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, complainant,
against
JAMES WAGER, ANDREW B. FALES, AND LEONARD LAKIN, defendants.

And now come the above named defendants, James Wager and Andrew B. Fales, in open court, and at the time of making and pronouncing the final decree in the above-entitled cause in favor of said complainant, and against said defendants, and at the same term of said court at which said cause was tried, to wit, at the June term for 1871, and respectfully pray an appeal from the whole of said decree, this day entered in this court to the Supreme Court of the United States; and further pray that said decree and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay.

Dated August 8th, 1871.

CASSODAY AND MERRILL,
Solicitors for Appellants, Janesville, Wis.

J. B. CASSODAY, *of Counsel.*

369 *Petition to Supreme Court.*

In the circuit court of the United States for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, complainant,
against
JAMES WAGER, ANDREW B. FALES, AND LEONARD LAKIN, defendants.
} In equity.

To the honorable the Supreme Court of the United States:

The appeal of James Wager and Andrew B. Fales, two of the above-named defendants, and the appellants herein, respectfully showeth:

That, upon the 13th day of December, A. D. 1870, the above-named complainant filed his bill in the circuit court of the United States for the western district of Wisconsin, against the above-named appellants, James Wager and Andrew B. Fales, and the above-named defendant, Lakin, in which said bill it is alleged, in substance, that said Lakin filed his petition in bankruptcy January 8, 1870, and was declared a bankrupt Feb. 2, 1870; that the complainant was appointed assignee in said bankrupt proceedings March 4, 1870; that Dec. 15, 1869, the said Lakin, being indebted to said Wager and Fales in about the sum of $3,000.00, and had been for nearly two years previously, and being in embarrassed circumstances and hopelessly insolvent, and with a view to give a preference to said Wager and Fales over his other creditors, did make, execute, and deliver to them his notes and mortgage for $3,000.00 on certain lots in Brodhead, Green County, in said western district of Wisconsin, and that the said Wager & Fales, at the time of procuring said mortgage, had reasonable cause to believe that said Lakin was insol-
370 vent, or contemplated insolvency, and the said mortgage was made with a view to evade the said bankrupt act, and was absolutely fraudulent and void, and executed out of the ordinary course of business of said Lakin, the debt thereby secured having been past due for a long time, and the mortgage to secure the same having been given upon a long and unusual time, the same is in pursuance of said bankrupt act prima facia fraudulent and void, and that the mortgaged premises have been surrendered to the complainant, who asks and prays that said mortgage be declared fraudulent and void, and given up and cancelled and discharged of record; and that Wager and Fales be enjoined from transferring the mortgage, and for general relief.

And these appellants further say that on or about the first Monday of February A. D. 1871, they, the said Wager and Fales, filed their separate answer to said bill, in which said answer they deny that on the 15th day of Dec., 1869, or any time prior to about January, 1870, they had any knowledge or information of said Lakin's alleged embarrassed circumstances, or insolvency, or bankruptcy, or in contemplation of insolvency or bankruptcy; that in which said answer they deny that said Lakin executed the said mortgage mentioned in said bill with a view to give a preference to them, the said Wager and Fales, or either of them, over any other creditors of him the said Lakin; that in which said answer they, the said Wager and Fales, deny that they or either of them, Dec. 15, 1869, or any time prior to January 10, 1870, had reasonable cause to believe, or any cause to believe, or did believe, that he, said Lakin, was insolvent, or contemplated insolvency, or that said Lakin was in embarrassed circumstances, or bankrupt, or contemplated bankruptcy; that said answer further denies that said mortgage was made or procured, or taken, or received with a view to evade the said bankrupt act, or any of the provisions thereof, or that the same was
371 fraudulent or void, or ought to be given up, or cancelled, or discharged of record, or that it was executed out of the ordinary course of business of said Lakin, or in any unusual manner or time, or that the same is prima facia fraudulent or void; that it was alleged in said answer that said Wager and Fales were frequently informed prior to Dec. 15, 1869, and verily believed, until January 10, 1870, that said Lakin was perfectly solvent, and had sufficient property to pay all his debts and liabilities, and worth more than ten thousand dollars over and above all his debts and liabilities and exemptions, and that he would for years continue to do a prosperous, successful and paying business as a merchant, and he was able to pay all his debts, including the

indebtedness to said Wager and Fales out of debts due him from other parties and the profits of his business, without in any way affecting his business or resorting in any way to any of the mortgaged premises.

And these appellants further say that on or about the last of June, 1871, the said complainant, by leave of the court, filed a general replication as of the first Monday of April, 1871.

And these appellants further say that the testimony and depositions on the part of the complainant and the said Wager and Fales, respectively, were taken out of court on written and verbal interrogatories by consent, and read in evidence by the respective parties on the trial of said cause; that said cause was tried at the June term of said court for 1871, at Madison, Wisconsin, on the 27th, 28th, 29th and 30th days of June, 1871.

That afterwards, and at the said June term of said court for 1871, to wit, on the *this* 8th day August, A. D. 1871, a final decree was made, and pronounced in the cause, wherein in substance it was adjudged and decreed that the mortgage mentioned and described in the complainant's
372 said bill of complaint bearing date on or about the 15th day of December, A. D. 1869, and executed by Leonard Lakin and wife to the said Wager and Fales upon the land therein described was and is fraudulent and void, and the same is held for naught, and that said Wager and Fales discharge said mortgage of record within thirty days, or in default thereof said decree be recorded, and that the same have the effect of a discharge.

Wherefore, these appellants come in open court, and at the same time of the making and pronouncing of said decree, and appeal from the whole of said decree of said circuit court of the United States, and respectfully prays that the decree of the said circuit court, and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court and every part thereof may be reversed and a decree made dismissing said bill, with costs, or such other decree as to the Supreme Court shall seem just.

Dated August 8, 1871.

CASSODAY AND MERRILL,
Solicitors for Appellants, Janesville, Wis.

J. B. CASSODAY and
WILLARD MERRILL,
of Counsel.

373 In the circuit court of the United States, for the western district of Wisconsin.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
against
JAMES WAGER, ANDREW B. FALES AND LEONARD LAKIN, defendants.
} In equity.

To Messrs. FINCHES, LYNDE and MILLER, *Solicitors for Complainant*:

SIRS: Take notice that at the time of pronouncing and entering the decree in the above entitled cause, to wit, on the 8th day of August A. D. 1871, during the session of said court at which said cause was tried, and in open court, the above-named defendants, James Wager and Andrew B. Fales, prayed an appeal from said decree and the whole thereof to the Supeme Court of the United States, and then presented

and filed the foregoing petition with the clerk of said court in said court, and that said prayer was then and there granted, and said appeal was then and there allowed by said court and the judge thereof, and that the bond of said Wager and Fales, in the penal sum of one thousand and five hundred dollars, with two sufficient sureties, who justified in the sum of three thousand dollars each, was then and there filed with said clerk in said court, and which said bond was then and there approved by said court and said judge, and a supersedeas entered therein.

Dated August 14, A. D. 1871.

CASSODAY AND MERRILL,
Solicitors for defendants and appellants, Wager and Fales,
Janesville, Wis.

We hereby accept and admit due service of the within appeal and notice this 16th day of August, A. D. 1871.

FINCHES, LYNDE AND MILLER,
Complainant's Solicitors.

374 At a stated term of the circuit court of the United States of America for the western district of Wisconsin, in the seventh circuit, held at the United States court-house in the city of Madison, on the eighth day of August, A. D. 1871.

Present, the Honorable James C. Hopkins, district judge.

Order allowing appeal.

AUGUSTUS O. HALL, ASSIGNEE OF THE ESTATE of Leonard Lakin, bankrupt, plaintiff,
against.
JAMES WAGER, ANDREW B. FALES AND LEONARD Lakin defendants.

At the time of pronouncing the decree in the above-entitled cause, and at the time of praying an appeal from said decree in open court, all of which was on the day of the date hereof, and on motion of Cassoday and Merrill, solicitors for the defendants James Wager and Andrew B. Fales, herein, ordered that said prayer for said appeal, and said appeal be, and the same is hereby, granted and allowed, on giving a bond, and security to be approved by the court, in the sum of one thousand and five hnndred dollars, conditioned for their prosecuting their said appeal to effect, and answer all costs and damages if they shall fail to make good their plea; and it is further ordered that the said appeal in this case, which was taken in open court when the decree was pronounced, be entered accordingly on the order-book of the court, and as of the date hereof, and as of the term of said court, at which the trial of said cause was had.

By the court: J. C. HOPKINS, *Judge.*

375 *Bond.*

In the circuit court of the United States for the western district of Wisconsin.

AUGUST. O. HALL, ASSIGNEE OF THE ESTATE OF Leonard Lakin, bankrupt, complainant,
against
JAMES WAGER, ANDREW B. FALES AND LEONARD Lakin, defendants. } In equity.

Know all men by these presents that we, James Wager and Andrew

B. Fales, of Rensselaer County, in the State of New York, two of the above-named defendants, as principals, and Henry P. Fales and Cyrus Miner, of the county of Rock, in the western district of Wisconsin, as sureties, are held and firmly bound unto Augustus O. Hall, as assignee of the estate of Leonard Lakin, bankrupt, complainant in the above entitled action, residing at Milwaukee, in the eastern district of Wisconsin, in the sum of fifteen hundred dollars, to be paid to the said Augustus O. Hall, as such assignee; to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 8th day of August, A. D. 1871.

Whereas the above-named James Wager and Andrew B. Fales have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled action by the circuit court of the United States for the western district of Wisconsin, against the said defendants, James Wager and Andrew B. Fales, and in favor of said complainant, on this 8th day of August, A. D. 1871: Now, therefore, the condition of this obligation is such, that if the above-named
376 Wager and Fales shall prosecute their said appeal to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

HENRY P. FALES. [L. S.]
C. MINER. [L. S.]
WAGER AND FALES, [L. S.]
By CASSODAY AND MERILL,
Their Attorneys.

Sealed and delivered in presence of—
WILLARD MERRILL.
ED. F. CARPENTER.

WESTERN DISTRICT OF WISCONSIN, *ss:*

Henry P. Fales and Cyrus Miner, each being duly sworn, each for himself deposes and says, that he is one of the persons named in and who subscribed the foregoing bond, and that he is a resident and freeholder in the county of Rock, in said district, and that he is worth the sum of three thousand dollars over and above all his debts and liabilities, and in property not exempt by law from execution.

H. P. FALES.
C. MINER.

Subscribed and sworn to before me this 8th day of August, A. D. 1871.
WILLARD MERRILL,
U. S. Cir. C't Com. for the Western Dis'ct of Wisconsin.

Approval of bond & stay of proceedings.

I hereby approve of the foregoing bond as to the form and amount thereof, and the sufficiency of the sureties therein named; and it is hereby ordered by the court at the time of allowing the appeal, and the filing this bond, that said bond operate and be a supersedeas in said cause, and that all proceedings on the part of the complainant in the execution of the decree mentioned in said bond be, and the same is, hereby stayed until the further order of the court.

Dated August 8th, 1871.
By the court: J. C. HOPKINS, *Judge.*

377 *Citation.*

By the Honorable James C. Hopkins, as one of the judges of the circuit court of the United States for the western district of Wisconsin: To Augustus O. Hall, assignee of the estate of Leonard Lakin, bankrupt:

Whereas James Wager and Andrew B. Fales have lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the western district of Wisconsin, made in favor of you, the said Augustus O. Hall, as such assignee as aforesaid, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of Madison, in the western district of Wisconsin, in the seventh circuit, the 15th day of August in the year of our Lord one thousand eight hundred and seventy-one.

J. C. HOPKINS,
Dist. Judge.

378 (Indorsed:) Supreme Court of U. S. Augustus O. Hall, assignee of the estate of Leonard Lakin, bankrupt, appellee, vs. James Wager & Andrew P. Fales, appellants. Citation. Filed Oct. 14, 1871. F. M. Stewart, cl'k.

We hereby admit service of a copy of the within citation this 10th day of October, 1871.

FINCHES, LYNDE & MILLER,
Complainants' Solicitors.

379 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, Frank M. Stewart, clerk of the circuit court of the United States of America for the western district of Wisconsin, do hereby certify that I have compard the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Madison, in the said western district of Wisconsin, this 22nd day of November, in the year of our Lord one thousand eight hundred and seventy-one, and of the independence of the said United States the ninety-sixth.

[SEAL.] F. M. STEWART, *Clerk.*

Fees for copy, $133.45.

(Indorsement on cover:) No. 168. James Wager and Andrew B. Fales, appellant, vs. Augustus O. Hall, assignee of Leonard Lakin, bankrupt. W. Wisconsin, C. C. U. S. Filed 2d December, 1871.

SUPREME COURT of the UNITED STATES

DECEMBER TERM, A. D. 1871, No. 468.

DECEMBER TERM, A. D. 1872. No. 229.

JAMES WAGER and ANDREW B. FALES,

Appellants,

against

AUGUSTUS O. HALL, ASSIGNEE OF LEONARD LAKIN—Bankrupt,

Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIST. OF WISCONSIN.

APPELLANTS' BRIEF.

J. B. CASSODAY &
WILLARD MERRILL,
Of Counsel for Appellants,
Janesville, Wis.

Supreme Court of the United States.

JAMES WAGER & ANDREW B. FALES
Appellants,
vs.
AUGUSTUS O. HALL, assignee of LEONARD LAKIN,
Bankrupt Appellee.

DECEMBER TERM, A. D. 1873.

A CONCISE STATEMENT OF THE CASE.

I

THE PLEADINGS AND THE QUESTIONS INVOLVED.

The bill of complaint was filed by the appellee to set aside a mortgage on lands in Brodhead, Green County, Wis., given by the bankrupt Lakin and his wife to the appellants, for $3,000, in five payments of $600 each, payable in 6, 12, 16, 20, and 24 months, executed and delivered December 15, 1869, being 24 days prior to his filing his petition in bankruptcy, on the ground that it was given in violation of the Bankrupt Act.

It is alleged in the bill, that at the time of giving the mortgage, Lakin was hopelessly insolvent and had been in embarrassed circumstances for some time, and that it was made with a view to give Wager & Fales a preference over his other creditors, and that when they procured the same, they had reasonable cause to believe that Lakin was insolvent, or contemplated insolvency, and that it was made with a view to evade the bankrupt act, and that it was executed out of the ordinary course of business of Lakin

upon a debt past due for a long time, and for a long and unusual time, and that it was absolutely and *prima facia* fraudulent and void, and prays to have the same declared fraudulent, and void, and given up, and cancelled, and discharged of record, and for an injunction. It was filed December 13, 1870.

The defendants Wager & Fales voluntarily appeared in the case, and filed their answer February 4, 1871, in which they *on oath* deny all the material allegations of the bill, and allege that they were frequently informed prior to December 15, 1869, and had verily believed until on or about January 10th, 1870, that Lakin was perfectly solvent, and resposible, and had sufficient property to pay all his debts and liabilities, and was worth more than $10,000 over and above all his debts and liabilities and exemptions, and that he would for years continue to do a prosperous, successful and paying business as a merchant at Brodhead, Wisconsin, and be able to pay all his debts including theirs, out of debts due him from other persons, and the profits of his business, without affecting his business, or resorting to the mortgaged premises. When the cause was reach for hearing, June 29, 1871, the plaintiff was in default, but his solicitors on motion obtained leave to file a replication as of May 1, 1871, when the same should be presented by them, but none in fact was ever presented.

Treating the case as though the replication had been actually filed, (*if it can be so treated*) and the question involved in the case and raised by this appeal upon the pleadings and proofs, is, whether the mortgage in question, is void under Section 35 of the Bankrupt Act ?

That is to say :

1. Did Leonard Lakin, when insolvent, or in contemplation of insolvency, make this mortgage to Wager & Fales with a view to give a preference to them over his other creditors ?

2. Did Wager & Fales at the time of receiving this mortgage, have reasonable cause to believe that Lakin was insolvent, and that it was made in fraud of the provisions of the Bankrupt Act ?

By stipulation the testimony in this cause, and in another cause in the same court, in favor of the same Assignee and against Andrew P. Hayner, was taken together, as most of it related to both cases, and the two causes were heard at the same time, and hence a considerable portion of the testimony in the record, is immaterial on this appeal. The Circuit Court declared the Hayner mortgage valid, but this mortgage invalid.

II

THE UNDISPUTED EVIDENCE.

Wagner & Fales are extensive *stove merchants* at Troy, New York. Prior to 1854, Lakin was for a time a clerk in Troy, and while there made the acquaintance of the defendant Fales, who was a clerk at the same time. In 1854, Lakin went to Janesville, Wisconsin, and for two years worked as a clerk in a grocery store. Then he was in partnership with a Mr. Williston in the grocery business in Janesville until the spring of 1858. Then he was a clerk for two years in Janesville and other places, during the last six months of which, he was in the hardware store of the witness R. J. Richardson of Janesville, who was a friend of Wager & Fales and acted as their agent in taking the mortgage in question. In 1860, R. J. Richardson started a branch hardware store at Brodhead, about twenty miles west of Janesville, and put the same under the control of Lakin, who received half of the profits for his services.

After about 16 months Lakin bought out Richardson, and continued a general hardware business at Brodhead, until his failure in January, 1870.—a portion of the time having a partner, but most of the time being alone. His sales in 1862 and 1863, were about $15,000 a year, and from 1864 to 1870 his sales were from $20,000 to $28,000 per year. His invoice of *goods* on hand taken in 1864, was $10,393.67. His invoice of goods taken September 13, 1865, was $8,450.77. Soon after that he started a branch store at Juda, near Brodhead, and his inventory taken December 31, 1867, was as follows :

Goods at Brodhead	$15,166 78
Goods at Juda	2,977.36
Notes and accounts at Juda	551.02
Notes and accounts at Brodhead	5,283.81
Total	$23,978.97

February 1868, Lakin sold out his entire stock of stoves and tinware, to Spaulding & Brown, of Brodhead, for $6,000, but continued to deal in hardware and agricultural implements.

Spaulding & Brown paid $2,000 cash down, and for the balance gave their note of $4,000, payable as fast as the stoves

should be sold, and a considerable portion of this note remained unpaid January, 1870 the time of the failure.

Up to April 1st, 1868, Lakin's stock was in a rented wooden building located in a wooden row of eight buildings, with wooden blacksmiths shops and carriage makers shops in the rear, and hence he could obtain no insurance, except at very high rates, from 5 to 8 per cent., and as he was constantly in fear of fire, he concluded to build a brick store, and for that purpose borrowed on long time $3,000 of his father-in-law, Hayner, April 1st, 1868, to be secured by mortgage on the store, and commenced building the store on lots which he then owned. Hayner superintended the building of the store, and it was completed near the close of the same year, costing, aside from the lots, $8,500.

Hayner resided in Brodhead, from April 1st, 1868 to June, 1869, when he moved to Woodstock, Ill., but he did not settle with Lakin nor receive his mortgage until August 27th, 1869.

Lakin commenced buying stoves of Wager & Fales as early as 1863, and continued to buy from $300 to $4,000 per year, from that time to and including 1867.

The indebtedness for which Lakin gave the mortgage to Wager & Fales, was mostly for stoves purchased by him in 1867. At the time of purchase it was agreed that Lakin should pay interest on all bills after maturity, and under this agreement Wager & Fales permitted the account to run until the notes and mortgage were given, he in the meantime making some small payments.

Lakin sold but few of the stoves bought of Wager & Fales during 1867, nor until he sold out his stove business to Spaulding & Brown, and the fact that he failed to realize on the stoves, and that he desired to build a new brick block during 1868, induced him to urge Wager & Fales to wait on him and as their account was on interest they consented.

When his store was completed, which was near the close of the year 1868, he found it had cost about double what he had expected, and as he had not realized on the stoves, he asked for further time, again promising to pay interest.

February 1st, 1869, Lakin wrote Wager & Fales that he had "a good stock of goods, in a good brick store, well insured and was in a better and safer condition than ever before."

March 4th, 1869, Lakin requested Wager & Fales to send him a statement of his account and "several notes running as long a time as they coule afford to let them, and that he would stamp, sign and return them," and do his best to meet them when due. The matter rested in this way until the witness, Johnson, who had for several years been the agent of Wager & Fales, and was then their partner, come west on his usual trip, when he saw Lakin and talked the matter over, and told Lakin he would give him whatever time he wanted, but if he gave him long time, the account ought to be settled up, and that he ought to give a mortgage on his real estate, as the old firm of Wager & Fales desired to close up their old matters. Lakin wanted the extension and thought it would be an advantage to his business bnt was reluctant to give a mortgage, and stated that he was perfectly responsible, more so than when the debt was incurrred, and that if his matters were closed up under the hammer, he would have $15,000 over and above his debts, and offered to turn out notes against other parties, three dollars to one, but [said the times were hard and he depended upon farmers for collection.

The witness, Richardson, who was a friend of Lakin, and also of Wager & Fales, told Johnson the same thing, and also informed him that Lakin had given him a similar statement when he endorsed for Lakin. The matter was left open on Lakin's promising to pay certain stipulated sums montbly.

After Johnson got home, and about September, 1869, he gave Wager & Fales a detailed account of his interview with Lakin, and told them that he considered Lakin kin a sttictly honest and responsible man in every sense of the word, that Dakin required some little time to make him easy and comfortable in his business matters,and that he thought it was their duty to accommodate him by giving him time, for the reasons that he had bought a great many stoves of them, and paid them a great deal of money, and probably would again, and was partly a Trojan, and out of their freindship for him, and then if he would give a ten per cent mortgage that would close up the account on the books of Wager & Fales. In this Wager & Fales concurred.

The matter remained in that way until some time in October or November, 1869, when Wager & Fales sent the matter to Richardson; Richardson and Lakin agreed upon terms, and Lakin was to get abstract, execute the papers and return them, but upon Richardson's submitting the proposition to Wager & Fales, they objected to certain portions of it, and Richardson informed Lakin that the matter must rest until he heard further from Wager & Fales, and when he did hear, Lakin consented to their terms, and the papers were fixed up accordingly.

These propositions and counter propositions, and the mutual confidence of the parties, delayed the matter until December 15th, 1869, when the mortgage and notes in question were given.

Lakin never had any difficulty in obtaining all the goods he wished on credit, and frequently refused to purchase goods on credit during the latter part of 1869; and during the year 1869 including the last four months of that year he was in the habit of stating to all who questioned him in regard to his condition, that he was worth from $12,000 to $15,000 over and above his debts and liabilities.

The assignee was at the time he was appointed, in the employment of John Nazro & Co., of Milwaukee, and continued in such employment until after the decree in this case. Lakin filed his petition in bankruptcy under the dictation of Nazro, who is one of his principal creditors. Four months prior to filing the petition, Lakin owed Nszro & Co. about $2,400. During that four months Nazro & Co. sold Lakin over $500 worth of goods, and Lakin paid them during the sametime over $400. His last purchase was over $200, and made November 26th, 1869, and his last payment December 20th, 1869.

Milwaukee and Brodhead were on a direct line of railroad, and the agents of Nazro & Co. were at Lakin's, more or less, during the time, and always urged him to buy more goods.

During those four months, Nazro & Co., granted Lakin extensions and knew as much about his affairs as Wager & Fales, as he made the same representations to both; thinks he may have made fuller statements to Nazro's agent than to the defendant's.

The assignee, as agent for Nazro, employed the witness, I. F. Mack, sen., to assist in getting Nazro's claim secured, about the time of the failure. Lakin, also, during this time, bought goods

of other parties in Milwaukee, on credit, and from time to time paid them money, and to one firm pledged the Spatlding & Brown notes as security.

December 17th, 1869, Lakin took an inventory of his stock of goods on hand and it was $9,493.81, and his notes and accounts about $10,000.

December 24th, 1869, Lakin took his family and went to Woodstock, Ill., to spend Christmas with his father-in-law, Andrew P. Hayner, leaving his store running as usual in the charge of his clerk, John Taylor.

December 26th, 1869, Norman Hall, a friend and former partner of Lakin, residing at Brodhead, went to Woodstock with a letter which he had just received from a friend in Chicago, saying that a report had been sent by some one in Brodhead to the *Mercantile Agency in Chicago*, that Lakin had made an assignment of his property to his father-in-law, Mr. Hayner. Lakin, knowing that he had some creditors who might trouble him, if they were disposed to, went to Janesville and took counsel of his attorney, Mr. Cassoday, and told him of the report, and what he supposed, at the time, to be a true statement of his affairs, that he owed about $12,000 besides what he owed Hayner on the mortgage above mentioned, and that he had goods, notes, accounts and real estate, which in his opinion were worth $28,000 or $30,000. His attorney advised him to make a statement of his affairs to his creditors, ask them for an extension, if necessary, telling them there was no truth in the report of the assignment and get his friends to endorse for him, if necessary, and in that way he thought there would be no trouble in fixing up matters satisfactorily. He went to Woodstock for his family with the intention of going home and following his attorney's advice. Befors he got home he was informed that his Milwaukee creditors, including Nazro's man, were at Brodhead investigating his matters. As soon as Lakin reached home, he and Nazro's man, the assignee in this case, went to work making up a statement of his condition, and on December 27th or 28th, 1869, and after a considerable investigation, he found that his indebtedness was much larger than he had ever supposed, being at least $23,000. Lakin then saw his attorney again, and told him how he had found matters, and was advised to send a full printed statement

of his condition to each of his creditors. Lakin made and sent out such a statement, dated January 1st, 1870, and it showed his indebtedness to be $26,447.73.

Lakin, then in company with Nazro's man, the assignee, again counseled with his attorney, who advised him, that as Nazro was one of his largest creditors and a man of great business experience, he had better go to Milwaukee with Mr. Hall and confer with him, and he did so. Nazro and Lakin went to the assignee's solicitors in this case, and Nazro then requested Lakin to go into voluntary bankruptcy. Lakin expressed a wish to do what was best for his creditors, but told Nazro he thought his creditors would get more money if they would select some one as assignee, and he would then turn over everything he had to such assignee for the benefit of his creditors; Nazro told Lakin that the securities he had given stood in the way of that, and that unless he went into voluntary bankruptcy, he would, himself, file a petition and force him into bankruptcy. Lakin then saw his attorney and filed his petition in bankruptcy January 8th, 1870.

Lakin's books were in a bad condition, and had been kept very loosely for years. So far as the sales were concerned, and accounts against customers for goods, the books were kept by his sister-in-law, Miss Louisa Hayner, and were in a fair condition, but so far as his *indebtedness* for goods was concerned, there seemed to be very little if any account kept of them, except as they returned the bills, and it seems that many were lost, and there was no way of obtaining a true statement, but much of it was made up from the memory of Lakin and his clerks, and information derived from his creditors. No statement of his indebtedness had been made for years. The result was, that his schedules in bankruptcy, dated Feb. 2d, 1870, showed his indebtedness to be $28,450.12.

Lakin's particular friend, Richardson, was on his paper during most of the last six months of the year 1869, and the company with which he was connected was a general creditor at the time of the failure. Lakin's father-in-law, Andrew P. Hayner, and his particular friend and former partner, Williston, were on his

paper to a considerable amount at the bank at the time of his failure. His brother-in-law, S. P. Hayner, is a general creditor for $1,083.30. Several of his most intimate friends are general creditors.

III

THE DISPUTED QUESTIONS OF FACT.

We will here only indicate the character af the evidence coming under this head, leaving its merits to be considered in our brief of the argument.

1. QUESTION.

To establish the affirmative of the first of the above questions, that is to say, that Lakin was at the time of giving the mortgage to Wager & Fales insolvent, and that he gave them the mortgage pith a view to give them a preference over his other creditors, the assignee called six witnesses.

The evidence of one of these witnesses, McNair, does not tend to establish the affirmative of this qustion, but does tend to establish the negative. He lent Lakin a considerable sum of money during the latter part of 1869, and as late as in December without any note or security and built a store, which cost between $5,000 and $6,000, by the side of Lakin's, and he swears that he would not have lent him themoney, nor built the store, if he had had any doubt about Lakin's continuing to do a large and successful business in Brodeead. This witness is one of the general creditors.

The evidence of the other five witnesses, Stewart, Clawson, Mitchell, I. F. Mack, sen., and Seeber, tend to show that for one or two years prior to the failure, Lakin had found it difficult to raise money to pay certain claims against him, and at times had been unable to do so; that he used moneys in his hands as treasurer of the school district, and also as treasurer of the Church and also moneys held by him in trust and in a fiduciary capac ity

and that they and some others in Brodhead regarded him irresponsible, but that during the same time he was doing a business of from $15,000, to $30,000 per year, and claimed to be worth $20,000 over and above all his debts. Two of these witnesses, Stewart and I. F. Mack, Sen., had, during the time, reported Lakin, as being insolvent, to the Mercantile Agencies of Bradstreet & Son and R. G. Dunn & Co.

To rebut this evidence, and to show that whatever might have been Lakin's actual condition, he never, prior to his failure, had any idea of stopping business, or being unable to pay all his debts or that the mortgage would operate as a preference to Wager & Fales, but that he gave the mortgage to obtain a long extension so that he would not have to crowd his own creditors, or sell property for less than it was worth to pay his debts, and that this extension would give him more money to use in his business and pay other debts, the defendants called nine witnesses, Rugg, Gosling, Taylor, Willis, Bret. Laird, Richardson, Hayner and Lakin, whose evidence in addition to the admitted facts, as above stated, tends to show that Lakin as treasurer of the school district and the church received no compensation, but by general consent of the Board and Trustees, used the moneys as he pleased, they drawing on him for the amounts as they might desire to use it, that there was no defalcation with either. That the witness, I. F. Mack, Sen., and some others were enemies of Lakin, making charges against him which on being investigated at his request turned out to be unfounded; that prior to the bank being located at Brodhead which was about 1869, several of the dealers there were in the habit of depositing their money with Lakin, and then giving orders on him as they wished to use their money, and that some of these accounts run up as high as $20,000 and $30,000, and that with one of them, there was some dispute and trouble, and that his reputation for honesty, integrity, credit and pecuniary responsibility in Brodhead was good to the time of his failure.

2. QUESTION.

To establish the affirmative of the second of the above questions, that is to say, that Wager & Fales at the time of receiving this mortgage had reasonable cause to believe that Lakin was

insolvent, and that the mortgage was made in fraud of the provisions of the bankrupt act, the assignee called but one witness, I. F. Mack, Junior, a son of I. F. Mack, Senior, and one of the general creditors of Lakin, and who formerly resided at Brodhead but at the time of giving his testimony at Chicago, a resident of Sandusky City, Ohio, and his evidence tends to show that the witness had a conversation with the defendant Wager in the presence of the witness Spencer, at Sandusky City, in November, 1869, in which Wager stated that he had made up his mind that Lakin was insolvent, but that the witness stated that he had recently been in Brodhead and that Lakin had assured him that he had property enough to pay all his debts. and he thought Lakin would pay dollar for dollar.

This testimony is flatly contradicted by Wager and the witness Spencer, and they give a very different version of the conversation.

In addition to this we have the positive evidence of Wager, Fales, Johnson, Richardson and Lakin, that Lakin had all the time represented himself to be worth from $12,000 to $15,000, over and above his debts and that they all believed it.

IV

THE DECREE, APPEAL, AND OPINION OF THE COURT.

Afterwards and at the same term of the court, to-wit: Aug. 8th, 1871, it was ordered, adjudged and decreed, that said mortgage was fraudulent and void, and should be discharged of record. The defendants at the same time appealed to this court.

The opinion of the court, set forth in the record, is to the effect that Lakin, was *conclusively presumed* to know his condition, and that his *ignorance* of that condition is no defence—that since the mortgage "gave the defendants a preference over his other creditors," "*in law* he should be held to have given it *with a view* to give them such preference." And from this finding the court draws as "*a necessary*

conclusion," that "when" Wager and Fales "received such mortgage," they "had reasonable cause to believe that Lakin was insolvent," and "that it was made in fraud of the provisions of the bankrupt Act.'"

SECONDLY.

AN ASSIGNMENT OF THE ERRORS RELIED UPON.

The decree is erroneous, because in and by the decree, it is ordered, adjudged and decreed that the mortgage therein mentioned, "was and is fraudulent and void, and the same is held for nought," and that Wager and Fales execute a satisfaction and discharge thereof, and in default thereof that the decree stand in lieu of such discharge, and for costs, whereas said court should have ordered, adjudged and decreed that said Bill of Complaint be dismissed with costs.

To be more specific, this error in the decree embraces and is based upon three fundamental errors, apparent upon the record in this case, as follows:

I.

The district Judge before whom this case was tried, finds that Lakin had reasonable cause to believe himself insolvent when he gave the mortgage, and that it gave Wager and Fales a preference over his other creditors, and that *in law* he should be held to have given it with a view to give them such preference.

The Judge in his opinion admits, that "the meaning of that part of" section 35, in question, "is not entirely clear, and has been construed differently by the courts and judges who have been called upon to pass upon it." The Judge then, among other things, says:

"The section does not require the debtor to *know* his insolvency or to *believe* it. It treats of insolvency as a condition in *fact*, not of *belief*. He cannot set up his ignorance of that condition to defeat the operation of that section. He is *presumed* to know and is *chargeable* with knowledge of it, and neither *ignorance* or wilfull blindness will exonerate him from the operation of its provisions, so that *being insolvent in fact*, and *chargeable by law* with knowledge of such condition, it would follow, it seems to me, *as a logical sequence*, that he gave the mortgage with a view to give the defendants a preference.

For not having property to pay all his creditors, the giving these defendants security to pay them in full necessarily operated as a preference, and he should be held as having intended the natural and logical consequences of his acts. This section of the the bankrupt act is almost a literal copy of section 89 of the Massachusetts insolvent law, and *their courts* before its adoption by Congress *had placed this construction* upon it."

The Judge, then, after admitting that "a case might arise in which a court might" give the section a different construction, overrules *Jones vs. Howland* 8, *Metcalf* (*Mass.*) *R.* 377, and a large number of other cases cited on the argument, and then to support his position cites several Massachusetts cases in which he claims that section 89 of the Massachusetts insolvent law received the construction for which he contends, when as a matter of fact none of the decisions cited by the Judge involved the construction of that section at all, but were made upon a prior insolvent law which read entirely different.

The Judge then cites some loose statements and *dicta* of other Judges who seem to have fallen into the same error with himself, and then goes on to say that under the bankrupt act of 1841:

"The *intent* of the debtor was the principal question. Under the present act a preference created by a party *'being insolvent'* is *made void* and *his intent or belief is not in the question.* The fact of insolvency being established or admitted, the preference ordinarily as to the debtor is presumed to be void, the presumption being strong or slight, according to the circumstances in each case. But I cannot see that *the fact* that the *debtor knew* or *did not know* of his insolvency at the time of creating the preference, *has* much to do in determining the question as to him."

The Judge then applying these rules to Lakins' condition, upon his view of the evidence "finds that Lakin, when he gave this mortgage to the defendants, was insolvent, and that he had no reasonable cause to believe himself solvent; that it was given to secure an existing debt; that it gave the defendants a preference over his other creditors; and that *in law* he should be held to have given it with a view to give them such preference."

We shall insist that most of the positions of the Circuit Court above mentioned are erroneous in law, and based upon a wrong construction of the 35th section of the bankrupt act. The Circuit Court finds that Lakin had reasonable cause to believe he was *insolvent* within the meaning of the bankrupt act when he gave the mortgage, but the court no where intimates in the opinion, that Lakin at the time of giving the mortgage, knew or had reason to believe *as a matter of fact*, that it would operate as a *preference* to Wager and Fales over his other

creditors, but claims that the existence of insolvency is the foundation of a legal conclusion to that effect. We shall insist that this is an error. The Court has erroneously stated the evidence.

II.

The circuit court held that Wager and Fales had reasonable cause to believe that Lakin was insolvent when they received this mortgage, and that it was made in fraud of the provisions of the bankrupt act. This is an error apparent by the method in which the court reaches the conclusion. The District Judge, in his opinion says:

" This last proposition, it seems to me, is a *necessary conclusion* from an affirmative finding upon the first. If an insolvent debtor gives a mortgage to one of his creditors, whereby *he gives him a preference* over his other creditors, and the creditor receiving the security *has reasonable cause to believe* the debtor insolvent when he received it, *the fraud upon the act*, as to both, is complete, and the last proposition, as I have said, *is but a logical conclusion* rather than an independent fact or proposition necessary to be found in addition to the others, except as it naturally flows therefrom."

We shall insist that this so-called "necessary conclusion" and "logical conclusion" has no foundation in any necessary or logical construction of the bankrupt act, and is therefore erroneous.

We shall insist that no fact is established in the case or found by the court, which authorized the finding or the "conclusion," or the *presumption* that Wager & Fales had reasonable cause to believe at the time of receiving the mortgage that it was "made in fraud of the provisions of the bankrupt act," or that Lakin was insolvent, and hence the finding is erroneous.

It is moreover error, because it is nowhere alleged in the complaint that Wager & Fales, at the time of receiving the mortgage, knew or had reasonable cause to believe that "it was made in fraud of the provisions of the bankrupt act."

The court misstates the evidence on this point.

III.

The decree is erroneous in any view of the case, since the answer sets up a complete defense to the bill of complaint upon the merits, and it is fully sustained by the evidence, and no *replication* has ever been filed.

THIRDLY.

A BRIEF OF THE ARGUMENT.

The decision of this case depends very much upon the construction to be given to the first clause of section 35, bankrupt act.

The clause reads:

"That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered or seized on execution, or makes any payment, pledge, assignment, transfer or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer or conveyance, or to be benefitted thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefitted."

If we eliminate from this clause all that does not apply to this case, and substitute the word mortgage for the general words designed to designate the transaction,and put Lakin for the bankrupt and Wager & Fales for the preferred creditors, and drop out the words of limitation, since we concede this was within the time, and the clause will be very much simplified, and will read:

If Lakin, *when insolvent*, or *in contemplation of insolvency*, *with a view to give a preference to Wager & Fales over his other creditors*, *made the mortgage to them*, *when they had reasonable cause to believe that he was insolvent*, and that the mortgage *was made in fraud of the provisions of the bankrupt act*—then the same is void.

Before this decree can be affirmed the court must find four independent facts or conditions—two of which must relate to Lakin, and two to Wager & Fales, to wit:

It must be established by the evidence and the court must find:

1. That Lakin made the mortgage *when insolvent* or in contemplation of insolvency. AND

2. That Lakin made the mortgage *with a view* to give Wager & Fales a preference over his other creditors.

It must also be established by the evidence and the court must find:

1. That Wager & Fales *had reasonable cause to believe* that Lakin was *insolvent when* he made the mortgage. AND

2. That Wager & Fales, when they received the mortgage *had reasonable cause to believe* that Lakin *made it in fraud of the provisions of the* bankrupt act.

I.

The evidence fails to establish, and the circuit court fails to find :

1. That Lakin made the mortgage when insolvent or in contemplation of insolvency. AND

2. That Lakin made the mortgage *with a view* to give Wager and Fales a preference over his other creditors.

POINT 1.

On the first point the circuit court held, that the fact or condition of Lakin's insolvency existed when he gave the mortgage, and that he had reasonable cause to know that it existed, but that as a matter of law it is wholly immaterial whether he actually knew or believed he was insolvent or not. The judge says :

" The section does not require the debtor to know his insolvency or to believe it. It treats of insolvency as a condition in fact, not of belief. He cannot set up his ignorance of that condition to defeat the operation of that section."

Page 186, *margin* 358.

The judge then defines what he means by " insolvency."

" In large commercial centres a failure to meet payments as they become due is deemed insolvency, but not so in the country. The custom of traders generally is different there, and a party should be held insolvent there only *when he fails to meet his debts according to the usage and custom of the place* of his business."

Page 188, *margin* 362.

With this deffinition we understand the court to say, that Lakin did " fail to meet his debts according to the usage and custom of the" village of Brodhead, and that the section in question does not require that the court should find that he knew it or believed it, and the court therefore finds that he simply " had reasonable cause to believe it."

It may be, that this section " treats of insolvency," *when used in this sense*, " as a condition in fact, not of belief." In this sense, a

man might be insolvent, and yet abundantly able to pay all his debts. Insolvency in this sense, does not tend to establish the fact that the debtor's property is less than his liabilities. It simply shows that he has not ready money, or property which he can readily convert into money, in time to meet his liabilities. It simply shows that by disappointment, or some unexpected turn in business, his immediate liabilities are in excess of his money on hand. It has no reference to the amount or extent of his property, except so far as the same may exist in the form of money. To use a Western phrase, the man finds that he has debts which are due, but he has "not got the stamps" to pay.

This definition of insolvency is purely technical and is confined to the bankrupt act, and has more particular reference to the 39th section. It is a fact or condition common even among men all over the west, whose liabilities bear no proportion to their property. The fact of whether a man is up to the "usage or custom" of his village in meeting his liabilities, is of but very little consequence in determing whether he has property enough to pay all his debts, and hence whether the giving a mortgage upon a part of his real estate to obtain a long extension, will operate as a preference or advantage over those creditors whom he expects to pay without an extension.

POINT 2.

Did Lakin make the mortgage *with a view* to give Wager and Fales a preference over his other creditors?

The circuit court seems to admit that the affirmative of this question should be established before the complainant would be entitled to a decree, but holds that it is a "logical sequence"—a "presumption" from the existence of insolvency, even if the debtor has no knowledge or belief of its existence. The judge says:

"He (the debtor) is presumed to know and is chargeable with knowledge of it, (insolvency) and neither *ignorance* or wilfull blindness will exonerate him from the operation of its (section 35) provisions, so that being insolvent in fact, and *chargeable by law* with knowledge of such condition, it *would follow*, it seems to me, *as a logical sequence*, that he gave the mortgage with a view to give the defendants a preference. For not having property to pay all his creditors, the giving these defendants security to pay them in full necessarily operated as a preference and he should be held as having *intended* the natural and logical consequences of his acts."

Page 186, *margin* 358.

Again: "The fact of insolvency being established or admitted the preference ordinarily as to the debtor is presumed to be void, the presumption being strong or slight, according to the circumstances of each case."

Page 187, *margin* 361.

Again: "The purpose of the act being to enforce the equal distribution of an insolvent's estate. *every act* of an insolvent debtor that *tends* to defeat that purpose *should be construed strictly* as against him, and courts *should indulge every presumption* that is permissible, according to well settled rules of law, to secure the full benefit of this cardinal principle of the law."

Pages 187–8, *margin* 361.

Again: "I therefore find in this case" * * * that the mortgage "gave the defendants a preference over his other creditors, and that *in law* he should be held to have given it with a view to give them such preference."

Page 188, *margin* 363.

It is evident from these quotations that the Circuit Court did not consider the evidence sufficient to establish, as an independent fact, that Lakin gave the mortgage with a view to give Wager & Fales a preference over his other creditors, but the court hold that it was so given as a deduction—a presumption—a conclusion from the existence of the fact of insolvency.

But the deffinition which we have seen the Circuit Court has given of "insolvency" would of itself seem to expose the absurdity of this position.

To hold that because Lakin failed "to meet his debts according to the usage and custom" of the village of Brodhead, that he, therefore, made this mortgage *with a view* to give Wager & Fales a preference over his other creditors, is to hold that if a man has not sufficient ready money to meet his debts as they become due and gives a mortgage on real estate to obtain long time from one of his principal creditors, and thereby expects to be enabled to meet his other debts and pay them without extensions, that he is, by so doing, conclusively presumed to have in view a preference or advantage for the man he has induced to wait for his pay, over the man whom he expected to pay without waiting, however, much the value of his property might be in excess of his liabilities.

Such a construction does violence to the language of the statute in question. It moreover does violence to the well established rule of

construction that every clause, sentence and word shall be so construed, if possible, to have some force and effect.

If courts are authorized to presume or conclude, that an act was done "with a view to give a preference to any creditor &c.," from the mere existence of "insolvency," as the circuit court did, then those words are superfluous in the statute. Especially is this so, if it is unnecessary, as the circuit court held, that the debtor should have any "knowledge" or "belief" as to his insolvency.

The opinion of the Circuit Court is upon the theory, that the principal thing to be considered, is the existence or non-existence of insolvency, and that when that is established, everything else follows, as a "logical sequence" or "conclusion of law" from it. With all deference to the learned Judge who decided this case we must say that the difficulty with this sort of logic, is, that the statute in question requires the establishment of other independent and additional facts and conditions, essentially different from the mere existence of insolvency.

The words—"with a *view* to give a preference"—were selected and put in this clause of the statute because they express a thought—a condition of things which the clause would not express without them, and hence they are not to be rendered insignificant by construction.

The word "view," has a peculiar aptness of expression, as used in this clause. Primarily it signifies a survey—an examination with the eye. It expresses more particular or continued attention to the thing which is the object of sight, than the word look or behold. A "view," therefore is impossible unless there is a picture, an object to be viewed, The word has the same significance when applied to intellectual or mental sight. There can be no intellectual survey, no examination with the mental eye, no view of any subject, unless the object surveyed, the picture examined, the subject considered, has a place in the mind and is recognized by the mental vision.

Lakin could not give a mortgage "with a *view* to give Wager & Fales a *preference* over his other creditors," without recognizing the fact, or in other words *knowing*, or at least *believing*, that he had not sufficient property to pay all his debts, and hence that in so far as he secured them in excess of their proportionate share of his estate, he would take from others a corresponding amount of their proportionate share of his estate, and thus prevent an equal distribution of his estate

which in his mind—his view—*at the time* was less in value than the amount of his liabilities. A view to give a prefference, therefore, as used in this clause is nothing more nor less than a mental picture—a vision of an amount of indebtedness by the debtor exceeding the value of all his property, and a purpose to prevent an equal distribution by paying or securing some creditors at the expense of others. If Lakin had the picture in his mind—the vision— then he necessarily had some intent or belief as to the effect of giving the *mortgage* and hence his intent or belief is in the question. The giving of a mortgage, or doing any other act by a debtor which would operate as a preference with such a picture in his mind, and with such a purpose, would establish an intent to give a preference.

But it is idle to talk about a man giving a mortgage with a view to give a preference to some of his creditors over others, when it is conceded that at the time of giving the mortgage he had no knowledge or belief that his property was less in value than the amount of his liabilities.

With a *view* to give a preference, involves *some knowledge* on the part of the debtor, as to the relation between his debts and his property, and as to whether one is in excess of the other, and hence if he has any view at all, he must necessarily have some intent or at least some belief. If this is so the whole foundation upon which this decree is based falls to the ground.

The circuit court holds that: "The section does not require the debtor to *know* his insolvency or to beleive it."

Page 186, *margin* 358

And Again: "Under the present act a preference created by a party being insolvent is made void, and *his intent* or *belief* is *not* in question."

Page 187, *margin* 361.

The idea of setting aside a mortgage on the ground that it is "*fraudulent*," without the person making it having any knowledge, or belief, or intent, that the giving it would have that effect, is so novel in itself, that the learned Judge before whom this cause was tried, seeks to justify it on the ground that *section* 89 of the Massachusetts insolvent law, from which the clause in question was almost literally copied, was construed the same way by the courts of that state "before its adoption by Congress."

Page 186, *margin* 359.

The Judge then on page 187 cites the Massachusetts cases which he claims, favor his construction, as follows :

Denning vs. Dana, 2 *Cush.* 172
Thompson vs. Thompson, 4 *Cush.* 127
Holbrook vs. Jackson, 7 *Cush.* 136–148
Lee vs. Kilburn, 3 *Gray* 594
Beals vs, Clark, 13 *Gray* 21
Barnard vs. Crosby, 6 *Allen* 327
Vennard vs. M' Connell, 11 *Allen* 562

The Judge then says : "These cases abundantly show that the courts of Massachusetts have not regarded the case of *Jones vs. Howland*, 8 *Met.* (*Mass.*) 377 as giving a construction of their insolvent law, and I am satisfied that the U. S. courts that have attempted to adopt that as a proper construction of the provisions of our present bankrupt act have not examined the provisions of the two bankrupt acts critically, or the insolvent law of Massachusetts, and the construction given to this section by the courts of that state, for if they had, they would have seen that the provisions of the act of 1841, upon which that was made, were entirely different from the present act, and that that decision had uniformily been held there as not applicable to the provisions of their insolvent law."

Page 187, *margin* 360.

It is evident that somebody has "not examined the provisions of the two bankrupt acts critically, or the insolvent law of Massachusetts, and the construction given to this section by the courts of that state for if they had, they would have seen," that no part of Section 89 of chapter 118 of the general statutes of Mass. of 1860, of which the clause of the bankrupt act in question is almost a literal copy—was in force in that state prior to the enactment of Sections 25–27 of chapter 284 of the laws of 1856 of Mass. and that most of the above cases cited by the circuit court were decided before 1856, and were based upon other statutes, and that the Massachusetts courts never placed the "construction" upon Section 89, contended for by the circuit court either before or after "its adoption by Congress."

Denny vs. Dana, 2 *Cush.* 160, was Trover by the assignee, decided at the October term, 1848, upon a transaction in July and August, 1845, and involved the construction of Section 3, chapter 124, laws of Mass. 1841, yet the court say: "But the statute provides, that the acts which it prohibits must be done with an intention to give a preference, The intent to prefer is essential," &c.

Page 172.

Thompson vs. Thompson, 4 *Cush.* 127, was upon a petition under the equitable jurisdiction of the insolvent court, dated Dec. 9, 1848, upon a transaction in 1848, and decided at the September term 1849, and involved the construction of Section 18, chapter 163 of the Laws of Mass. for 1838, giving a deffinition of insolvency when applied to traders.

Holbrook vs. Jackson, 7 *Cush.* 136, was assumpsit by mortgagees commenced October 30, 1847, on a mortgage dated October 20, 1846, and was decided at the March term, 1851, and the principal question was as to the admission of evidence under section 3, chapter 124, laws of Mass. for 1841. And yet in that case the court had instructed the jury:

That if "at the time when the mortgage was made," the mortgagors "*believed* themselves to be solvent; that they *believed* themselves able to pay all their debts, and *expected* and *intended* to do so; that they *intended* and *expected* to go on with their business, *anticipated* no failureor stoppage,and had no *intention* to give a preference to Holbrook, but gave the mortgage in the regular course of business, and *as a means of aiding them in carrying it on*, then under such circumstances and with such intent, the mortgage would be valid."

Page 142.

The verdict was for the defendants, and the mortgagees appealed, and the court held that the instruction was more favorable to them than they had a right to ask, under section 3, chapter 124 L. 1841, but even this was done against the protest of RUFUS CHOATE and B. R. CURTIS, who took the appeal, and who insisted that the law was accurately stated in *Jones vs. Howland*, 8 *Met.* 377, notwithstanding the peculiar wording of said section 3.

Lee vs. Kilburn, 3 *Gray* 594, was an action by assignee for conversion on a transaction in 1852, and was decided at the September term of 1854, and simply defines "insolvency" under sec. 3, ch. 124, L. 1841 of Mass.

Beals vs. Clark 13, *Gray* 18. Foreclosure of a mortgage made in 1856, upon proceedings commenced in 1856, and decided at June term 1859, but the distinction between the statutes is nowhere referred to in the statement of the case, the briefs of counsel, or the opinion of the court, and simply holds that "the intent to prefer" need not be proved by direct evidence, but may be inferred from other facts.

Barnard vs. Crosby, 6 *Allen*, 327. Although decided at the January term, 1863, yet it was an action upon notes made November 16th, 1855, and the defence was a discharge in insolvency, and a release dated January 14, 1857, and the replication was that the discharge and release were obtained by fraud.

Hoar, J. charged the jury that if the makers of the notes "were unable to pay their notes and meet their business engagements in the ordinary course of business, *and knew that fact*, and then made a mortgage of personal property in their possession to secure a preexisting debt, and within six months went into insolvency, a discharge thereupon obtained is invalid."

The court hold, on page 331:

"If we analyze this ruling, it will be seen that it embraces all that is required by sec. 3, ch. 124 Mass. St. 1841, to invalidate a discharge." * * "It also requires them *to find that they knew the fact of their insolvency*," etc.

Vennard vs. M'Connell, 11 *Allen* 555. This was upon an appeal from the decree of the judge of insolvency, *refusing to grant a certificate of discharge to an insolvent debtor*, decided at the January term, 1866. The principal point involved in the decision, is that the jury found that the appellant "being a merchant or tradesman" did not keep proper books of account subsequent to July 6, 1856, and that "this fact of itself, under general statutes, chapter 118, *section* 87 *operates to deprive him of his discharge.*"

This disposes of all the "cases" from which the circuit court after "critical examination" is "satisfied that the United States courts that have attempted to adopt" the ruling in *Jones vs. Howland*, 8 *Met.* 377, "as a proper construction of the provisions of our present bankrupt act, have not examined" "critically" the "provisions" of "the insolvent laws of Massachusetts, and the construction given to this section (89) by the courts of that state."

The difficulty with this portion of the opinion of the learned Judge is, that he wholly failed to perceive that none of the cases cited involved the construction of said section 89, chapter 118 general laws 1860, page 593, but did involve the construction of previous insolvent laws or other sections of that law. It may be well to refer to some of the provisions of the statutes under which the above decisions were made:

Sec. 10, *ch.* 163 *Laws of Mass.* 1838, states the cases in which a discharge will not be granted. *Laws Mass.* 1836–1853 *p.* 92. By

sec. 3, *ch.* 124, *Laws of Mass.* 1841, the provisions of the above section were extended so that no discharge should be granted where the debtor made "any assignment, sale, transfer or conveyance of," etc. * * intending to give a preference to a pre-existing creditor, etc. * * "*unless said debtor shall make it appear that at the time of making such preference he had reasonable cause to believe himself solvent;* and *all preferences so made* or intended to be made, shall, as to the other creditors, be void; and the assignee may recover," etc., * * "*provided*, the creditor, when accepting such *preference*, had reasonable cause to believe such debtor insolvent."

The words in italics were evidently intended to shift the burden of proof from the assignee and the general creditors, to the debtor and the creditor who received the preference, and hence the absurdity of taking from the Massachusetts cases the language which they have taken from this section, and apply it to a person who receives a preference under the clause in question of section 35, bankrupt act.

Sec. 8, *ch.* 178, *laws of Mass.* 1844, provides that no discharge, etc. shall be granted *if the debtor* "when insolvent, shall within one year" next before filing the petition "secure," etc., * * any pre-existing debt," etc., if the creditors "*prove* that *at the time* of making said payment, or giving said security, *the debtor had reasonable and sufficient cause to believe himself insolvent.*"

Mass. Laws, 1836–1853, *p.* 318

It is the last clause of this section, and the above words in italics in sec. 3, ch. 124, which, after being filtered through the Massachusetts courts, are adopted by the circuit court in this case, as the true construction of the clause in question of said section 35; and on the strength of these old Massachusetts statutes, which the circuit court mistakes for judicial opinion, not only the case of *Jones vs Howland*, 8 *Met.* 377, is overruled, but also the English cases upon which it is based, and the decisions of the federal courts which have followed it in construing this clause of the bankrupt act.

But let us look a little further into the decisions of the Massachusetts courts.

Day vs. Bardwell, 97 *Mass.* 246, was a bill in equity to set aside proceedings *instituted* under the insolvent laws of Massachusetts March 18, 1867, and the court after stating that section 35 nearly corresponds to their sections 89 and 90, say that section 35 "provides that if the debtor shall make to any person *with notice of his intent* certain *fraudulent* preferences," etc. (Page 253.)

Burpee vs. Sparhawk, 97 *Mass.* 342, was an action of tort by the assignee upon a transaction which took place in 1865, and was decided at the October term, 1867. AMES, J. among other things, charged the jury: "That the burden was on the plaintiffs to prove: 1. That the goods were placed in the defendant's hands and under his control *with a view* to give a preference, that is to say *an advantage over the creditors generally.*" * * "And he further instructed the jury that if they should believe that Henry (the debtor) at the time of the conveyance of the goods, *from ignorance* or *misapprehension, supposed himself to be solvent, or supposed that there was really no balance against him in his accounts with the defendant*, then it would be *impossible to say* that such conveyance *could be with a view to give a preference.* (Page 343.)

The court concludes by saying, "the instructions given to the jury were correct." (Page 345.)

Forbes vs. Howe, 102 *Mass.* 427. This was an action of tort by the assignee under the United States bankrupt act. The court among other things, charged the jury:

"The plaintiffs *must prove* that the debtor was insolvent at the time of making the conveyance; that *he made it with a view of giving a preference to a pre-existing creditor;* that he had at the time reasonable cause to believe himself insolvent; that the creditor, at the time of receiving the conveyance, had reasonable cause to believe that the debtor was insolvent and had also reasonable cause to believe that the *debtor intended the conveyance as a fraudulent preference* of him against the provisions of the bankrupt act." (Page 430)

The court refused to give a certain other instruction on the question of the debtor's "intent to give a preference," and upon that refusal the court says:

"The presiding justice, having already instructed the jury that the plaintiff *must show an intent* to give a preference, on the part of the debtor, might well have regarded a repetition of the proposition in another form unnecessary." (Page 434.)

Then, speaking of the decisions under the United States Bankrupt Act of 1841, as compared with this clause of section 35, Bankrupt Act of 1867, the court say:

"Under this statute, we think the phrase 'with a view to give a preference' must be construed somewhat less strictly," than the phrase made "in contemplation of bankruptcy," but "*so as to include an intent* to give one creditor any *advantage* over others in respect of payment or security of his debt." (Page 436.)

So that the Massachusetts cases, so far as they go, are to the effect that the complainant was bound to prove in this case, that Lakin gave the mortgage "with an *intent* to give" Wager & Fales an advantage over other creditors, before he was entitled to a decree.

A fair analysis of Section 2 of the United States bankrupt act of 1841, and of Section 35 of the present bankrupt law, will we think, reveal the fact, that they are as to the *intent* of *the debtor* essentially the same, and we think the authorities sustain this position.

Jones vs. Howland, 8 *Met. R* (*Mass*) 377, was under Section 2 bankrupt act 1841, and the court held that: "If a party who *fears* or *believes* himself insolvent, but *does not* contemplate stoppage or failure, and *intends* to keep on, and make his payments, and transact his business, hoping that his affairs may be thereafter retrieved, and *in that state of mind* makes a sale or payment, without intending to give a preference, and as a measure connected with going on in his business, and not as a measure preparatory to, or connected with, a stoppage in business, such sale or payment is not void, as made in contemplation of bankruptcy, within the meaning of the the second section of the United States bankrupt act of 1841, though he immediately afterwards became bankrupt." To the able opinion of the court by *Hubbard J.* we invite special attention.

After an able and analytical review of the English cases the court say: "The result of these cases is the drawing of a distinction between an *actual insolvency* and a contemplated bankruptcy, between the payment of a just debt in the course of business, *though insolvency exists and is known to the insolvent*, and the design to give a preference, in view of stopping payment. And in view of all the authorities we hold the law to be this: that though insolvency *in fact exists*, yet if the debtor honestly *believes* he shall be able to go on in his business, and, with such *belief*, pays a just debt, *without a design* to give a preference, such payment is not fraudulent, though bankruptcy should afterwards ensue." (Page 385.)

It is said that a man must be supposed to intend the natural result of his act. But this remark, though often treated as an axiom, is by no means an infallible proposition. The result is not always evidence of the supposed intent. When we *look back upon events* that have happened, *we stand in a different position*; we behold with a clearer vision as we embrace within our glance the *beginning* and the *end*, the *act* and the *consequences*. But the man who is *doing the act* may contemplate a very different result. His judgment may be biased by his wishes, and sanguine feelings may be the cause of overlooking difficulties, which to a more quiet temperament might appear insurmountable. Disappointments also may take place which were not anticipated. The experience of others is rarely a guide to an embarrassed man, and he goes on with the hope of relief, even against hope. To infer, therefore, a *design*

to give a preference to a favored creditor, and in the immediate expectation of bankruptcy, from the mere fact of insolvency, is by no means a certain inference nor such as the jury would be necessarily bound to draw from the debtors knowledge of his insolvency. The *evidence* must also go *further* and establish, as a *fact*, the *design* to give the preference—a fact too important to be left upon conjecture." (Pages 386 and 387.)

The court in the above opinion follows the best considered English cases:

Fidgeon vs. Sharpe, 5 *Taunt.* 545
Morgan vs. Brundrett, 5 *Barn.* & *Adolph.* 397
Atkinson vs. Brindall, 2 *Bing. N. R.* 225
S. C., 2 *Scott.* 369
Hartshorn vs. Slodden, 2 *Bos.* & *Pul.* 582
Gibbons vs. Phillips, 7 *Barn.* & *Cres.* 529
Belcher vs. Prittie, 10 *Bing* 408

These cases have been adopted by this court as containing the "sounder rule" of the English cases, and hence this court takes the same view as the court did in Jones vs. Howland.

Buckingham vs. McLean 13 *How.* 169–170

The doctrine stated in *Jones vs. Howland* has been cited with approval or substantially followed in many of the circuit and district courts of the United States.

In re Gregg 4 *Bankrupt Register*, 150 *Hoffman J.* says: "The law on this point (*intent* to give a preference) is well laid down in *Jones vs. Howland* 8 *Met.* 377," and then quotes from it at length.

In Morgan, Root & Co. vs. Mastick, 2 *Bankrupt Reg.* 163. Judge SHERMAN "held that the decision in *Jones vs. Howland* 8 *Met.* 377 was the correct statement of the law of the case, and as such read it in full to the jury."

In re J. P. Doan vs. Compton & Doan, 2 *Bankrupt Register* 182 *and* 183. TREAT J. says: "The following views expressed by the court in *Jones vs. Howland*, 8 *Met.* 385 meets the full approval of this court," and then cites at considerable length from that case including the portion above quoted; and concludes by saying "with this we fully concur."

In *Langley vs. Perry*, 1 *Bankrupt Reg.* 155, LEAVITT J. held that it was unnecessary to prove an *intent* to prefer, as a matter of fact, but the case was reversed on petition by his Honor, Justice SWAYNE, who is reported to have said: "It becomes a question of fact. The *innocence or guilt* of the act depends upon the *mind of him who did it*, and it is not a fraud within the meaning of the bankrupt law, unless

it was meant to be so. Here the proof submitted in the case is clear that the assignment was an honest act, and was not intended either to defraud creditors or defeat or delay the operations of the bankrupt act."

2 *Bankrupt Reg.* 180.

In re Munger & Champlin, 4 *Bankrupt Reg.* 91, WITHEY J adopts and follows the same view.

In re Dibblee, 2 *Bankrupt Reg.* 185, BLATCHFORD J. says that the question is whether the debtor "did so with *intent* to give a preference," or "with *intent* to defeat or delay the operations of the bankrupt act." * * "If a person while paying one creditor, *honestly supposes* that he is able to pay every creditor, *there can be no intent to give any preference.*"

It is evident that as to the debtor the clause in question must receive the same construction as that clause of Section 29 which provides that "no discharge shall be granted, or, if granted, be valid" if the debtor "*has given any fraudulent preference contrary to the provisions* of this act" *In re Locke*, 2 *Bank. Reg.* 124, *in re Gay*, 2 *Bank. Reg.* 115. Under this clause it has frequently been held that: "In order to deprive a party of his discharge, the transfer or conveyance constituting the preference, must be made by him in *contemplation* of bankruptcy or insolvency, or when he is in fact insolvent, and, *in the latter case*, the court must not only be satisfied that he was insolvent, but, further *that he either had actual knowledge of his insolvency*, or *had good grounds for fearing and believing that he was insolvent, and acted on such belief in making the preference.* In short, he must have *designedly* and *intentionally* given a preference, meaning to secure or pay *that particular* creditor, when he was *not able to pay all* his debts in the usual and ordinary course of business, at the time, *fearing* and *believing* such to be the condition of his affairs.

The above is taken from the opinion of FOX J. *In re Gay*, 2 *Bank. Reg.* 115.

BLATCHFORD J. *In re Lewis* says "this whole subject is thoroughly discussed and disposed of by Judge FOX, of the District Court of Maine in a full and able opinion in which I concur."

2 *Bank. Reg.* 146.

In Re. Doyle, 3 *Bank Reg.* 158, the district court of Rhode Island adopted and followed the above opinion of Judge Fox, as "*the law of the case.*"

"The payment of a debt through inadvertence, or under a *mistaken sense of duty*, and without any fraudulent *intent*, will not deprive a bankrupt of his discharge."

LOWELL, J.—*In re. Locke.* 2 *Bank Reg.* 124.
In re. Burgess, 3 *Bank Reg.* 47.

Toof, et al, vs. Martin, Assignee, 13 *Wall.* 40, confirms our theory of the law of this case, so far as it goes. That a trader or merchant is insolvent within the meaning of the bankrupt act when he is unable "to pay his debts, *as they become due* in the ordinary course of business," we readily concede, but as we have seen the paying of a debt in full *with property instead of money*, or the obtaining a long extension of a debt by giving a mortgage on real estate for the purpose of relieving himself from mere technical insolvency, so as to be better prepared to pay the balance of his debts. would not be such an act, as would prevent the debtor's discharge, or avoid the mortgage, or the payment. Such an act, would be merely for the purpose of making him easy and comfortable in his business, and not for the purpose of giving one creditor an advantage over another. This court in the case last cited, has well said:

"The term insolvency is not always used in the same sense. It is sometimes used to denote the insufficiency of the entire property and assets of an individual to pay his debts. This is its general and popular meaning." (Page 47.)

It is this idea or notion of "insolvency" *which must appear to the mind of the debtor*, before he can be said to be acting "with a view to give a preference" or an advantage of one creditor over another. There could be no advantage, no preference in the case of *mere technical* insolvency, unless it were against the creditor who agreed to give the extension. The words with a *view to give a preference*, presupposes , not only, the existence of insolvency in "its general and popular" sense as above defined by this court, but that the mind of the debtor must recognize its existence, he must *know* or *believe* that his property is insufficient to pay his debts, and until he has such knowledge or belief, it would be impossible for him to have *in his mind the view of a preference*, as the result of transfering property in payment of a debt, or giving a mortgage upon real estate to obtain a long extension. The statute in question does not read that the debtor with a view to his own "*insolvency*," etc., but with a view to give a *preference* which necessitates or presupposes a *mind considering* or *acting upon* a financial condition covered by the word insolvency used in "its general and popular" sense as above defined.

Nor is the recent decision of this court in *Buchanan et al, vs. Smith, assignee,* 5 *Chicago Legal News* 277, decided at the present term, at all in conflict with our theory.

POINT 3.

By attempting to follow the Massachusetts decisions the circuit court was led into a position which cannot be sustained. We do not deem it necessary to examine the evidence in detail, for notwithstanding the opinion of the court strongly colors the facts against us, it is too apparent for comment, that the decision was based upon the theory, that although Lakin had no knowledge or belief that he was unable to pay all his debts, and had no thought or expectation of stopping business, or doing anything to give one creditor an advantage over another, yet that the court, from the mere existence of insolvency subsequently ascertained, had the right to assume that he gave the mortgage with a view to give Wager & Fales a preference. It must be admitted that Lakin finished his store in 1868, and there is no evidence of any financial change in his condition subsequently, or that he contracted any debts of any importance afterwards. There was no visible change in his affairs in the fall of 1869, from what it had been for years. It is true it was a little harder to collect debts and hence to meet bills. It is admitted and sworn to by opposing witnesses, that his trade was from $20,000 to $28,000 per year. He swears, and no one attempts to dispute him, that he supposed he was worth, and frequently during 1869, stated that he was worth $12,000 to $15,000 over and above all his debts, and that he never found out to the contrary until after a false dispatch had been sent to the Commercial Agencies that he had made an assignment to his father-in-law, and after he had returned from Woodstock, Illinois, and had made a thorough investigation of his condition in connection with the assignee in this case.

(See Lakin's testimony, pages 73–4, 78, 86, 88.)

That Lakin was never a defaulter, as treasurer of the church, or school district, that what money he used was by consent of the board and trustees, and that he was regarded as an honest man and could get all the credit he wanted, and had the confidence of all, except I. F. Mack, Sen. and H. B. Stewart and a

few under their control, and had for years, and from 1863 till the bank was opened in Brodhead in 1869, received money on deposit from many of the dealers there, is conclusively established.

Lakin's testimony, pages 89–92.
Dr. B. C. Brett's testimony, pages 96–7, 100.
T. D. Laird's testimony, pages 102–3.
R. F. Rugg's testimony, pages 33–4–5.
S. M. Gosling's testimony, pages 36–7.
John Taylor's testimony, pages 39, 42.
F. H. Willis' testimony, pages 79, 80.

That Lakin fully settled his account as school treasurer with the school district within *ten days* after his successor was elected is also conclusively established by "Exhibits B, 2, C, 2, D, 2." (*Pages* 125–6.)

That the settlement with W. H. Strawser of an account of nearly $30,000 received on deposit and by him checked out was closed up satisfactorily December, 1868, is also conclusively established by "Exhibits E, 2, F. 2." (*Page* 126.)

The fact that Lakin was, and is regarded as strictly an honest man, is evident from the fact that no witness was called to contradict any statement in his testimony.

That Lakin had the best of credit, and was regarded as perfectly responsible, is further evident from the fact that his indebtedness, as finally ascertained was $28,250.12. and that not a dollar of this was secured, except the $3,276.87. he borrowed of Hayner to build the store under an agreement that a mortgage should be given when the store was finished. A small account to Pierce & Whaling of Milwaukee to whom he pledged the Spaulding & Brown note, and the mortgage in question, and except further that his father-in-law, Hayner and Williston, had indorsed two or three small notes, including one at the bank; and it will be seen by the list of his debts (*Pages* 132–3) that nearly $11,000 of this large indebtedness, including that to Hayner, was in favor of parties residing in Rock and Green Counties, where Lakin was well known and intimately acquainted. Besides he swears that he was never sued but once, and that on a matter which he disputed and defeated.

During the last four months before his failure, John Nazro & Co., the most active of all the creditors in this prosecution, and

whose agent was frequently at Lakins store, sold Lakin *on account* $512.62. and received from him *on account* for debts *past due* $409.20. (*Page* 84.)

Lakin positively swears that Dec. 26, 1869, and after the false report in regard to his having made an assignment, he thought he was owing about $12,000, besides the debt to Hayner, and that he "had goods, notes, accounts and real estate which in his opinion were worth $28,000 to $30,000. (*Page* 87.) and that it was only after a long investigation that he found he was mistaken.

The fact is that Lakin's credit was so good, that he had but very little trouble in borrowing all the money he wanted on his individual notes, and had been in the habit of doing so for years, and this explains why he had kept so little track of this class of his indebtedness, and hence his indebtedness was double what he supposed.

If Lakin has sworn to the truth, and he is nowhere contradicted, then it is impossible that he, by giving this mortgage, could have intended to give Wager & Fales a preference over his other creditors.

II.

The evidence fails to establish, and as we think the court was not authorized to hold:

1. That Wager & Fales, at the time of receiving the mortgage had reasonable cause to believe that Lakin was insolvent when he made it. AND

2. That Wager & Fales, when they received the mortgage had reasonable cause to believe that Lakin made it in fraud of the provisions of the bankrupt act.

POINT 1.

Did Wager & Fales at the time of receiving the mortgage have reasonable cause to believe that Lakin was insolvent when he made it?

The circuit court answers this question in the affirmative—not as an independent fact—but as "a necessary conclusion from" the existence of Lakin's insolvency. The court say:

"If an insolvent debtor gives a mortgage to one of his creditors, whereby he gives him a preference over his other creditors, and the creditor receiving the security has reasonable cause to believe the debtor

insolvent when he received it, the fraud upon the act, as to both, is complete, and the last proposition, as I have said, is but a logical conclusion, rather than an independent fact or proposition necessary to be found in addition to the other, except as it naturally flows therefrom."

Pages 188–9, *margin* 363.

We understand the court here to say, that if Lakin was in fact insolsolvent when he gave the mortgage, and the effect of it was to give Wager & Fales a preference, then it is "*a logical conclusion*," which "naturally flows therefrom," that Wager & Fales when they received it, had reasonable cause to believe that Lakin was insolvent, and that he did give the preference, and that this makes "the fraud upon the act, as to both complete."

That is to say, the fact that Lakin was, Dec. 15, 1869, in a certain financial condition, in Brodhead, Wisconsin, and on that day gave to Wager & Fales a mortgage upon real estate, which as a matter of fact, operated as a preference to them, are facts, from which the court can draw the "logical conclusion," that Wager & Fales in Troy, New York had at the time reasonable cause to believe that Lakin was then in that condition, and that the giving of the mortgage would have that effect.

The absurdity of this position is still more palpable when it is remembered, as we have already shown, that the court in the opinion before us seems to concede that Lakin had no knowledge or belief of his own insolvency, and no intent to give a preference, but that he had reasonable cause to believe he was insolvent, and therefore he must in law be held to have given the mortgage with a view to give a preference.

The substance of this logic is this: Wager & Fales had reasonable cause to believe that Lakin was insolvent, because Lakin had reasonable cause to believe he was insolvent, and Lakin had reasonable cause to believe he was insolvent, because he was insolvent. We are not surprised that the court should add: "This is the most difficult question *under the testimony* to decide," &c. (*Page* 189.) But if we read the opinion a little further, it will be apparent, that the learned Judge is not exactly willing after all to hold as "a logical conclusion" that Wager & Fales had reasonable cause to believe the existence of certain things in Brodhead from the mere fact of their existence, and so on *page* 189, the Judge says:

"Their debt was over two years past due. He had been in business all the while, had only paid in the two preceding years about $700.00 upon it; had sold out the stock of goods for which the account was

made; had transferred a part of the paper received on that sale as collateral security to others of his creditors; had repeatedly applied for extensions which had been refused; had been repeatedly dunned without success; refused in July previous to give them a mortgage as a condition of an extension; wrote them that he thought such mortgage would injure his credit; were told by Mr. Mack, in November, at Sandusky, Ohio, that he thought he could not go through."

If these things were all sustained by the evidence, yet there is nothing in it, except the alleged statement by Mack, which could tend to convince Wager & Fales, that Lakin was insolvent, unless it be the mere fact that the debt was nearly two years past due, and that Lakin had failed to pay. But several of these statements are in conflict with the undisputed evidence. The complainant gave no evidence on any of the things here detailed, except the witness Mack, and hence cannot claim they are established unless sworn to by our witnesses. Although Lakin in February, 1868, sold his *entire stock* of tinware and stoves including the stoves "for which this account was made," to Spaulding & Brown for $6,000, yet he only received $2,000, and for the balance their note for $4,000, "*payable as fast as the stoves should be sold.*" Lakin expected when he "sold to receive about the whole of this note in 1868, but a large portion of it was unpaid in the fall of 1869."

Lakin's testimony, page 74.

Lakin bought stoves of Wager & Fales every year from 1863 to 1867. This account was for stoves bought in 1867, and which he expected to sell that fall. and when he failed to sell, he stated the condition of the stove trade to Wager & Fales by letter and *they replied in substance that they would carry the account if Lakin would pay 7 per cent. interest.* (Page 77.) This probably led to the agreement between Lakin, and Spaulding & Brown that they were not to pay Lakin any faster than they sold the stoves.

It is true the Spaulding & Brown note was turned out to Pierce & Whaling, of Milwaukee, in the fall of 1869, but it was after Johnson —agent of Wager & Fales—had been to Janesville in the summer of 1869, when the question of giving the mortgage was partially agreed upon, but was to be submitted to Wager & Fales by Johnson when he returned in September.

Lakin's testimony, page 77.
Johnson's testimony. page 152.

But there is not a particle of evidence that Johnson, Richardson, Wager or Fales, or any one acting for them, knew anything about the

note being turned out to any one, and hence it does not tend to show any cause for any belief on the part of Wager & Fales.

It is true that Lakin "had repeatedly applied for extensions," but it is not true and there is no evidence tending to show that Wager & Fales ever refused to grant Lakin any extension.

It is true that Lakin, on cross-examination by Mr. Finch, says he did refuse to give Johnson a mortgage in July, 1869, (page 107); but on pages 121–2, he says that Johnson did not absolutely require or insist upon his giving a mortgage, and that he, Lakin, did not absolutely refuse to give a mortgage, and in the very letter referred to by the Judge which is on *page* 176 and dated July 9, 1869, Lakin says:

"I have *not refused* to give it, (the mortgage) but I ask as a favor that you excuse me from so doing." In the same letter he says: "I assure you that I am responsible for all I owe. *I never was in so sound a condition as at the present time* Fire would be the worst calamity that could befall me, *and then my insurance money would more than pay my debts.* You shall have every dollar I owe you, with interest. I know if you understood my position as I do myself you would not ask for the mortgage on my store."

It is evident from all Lakins testimony, that all he meant to say in answer to Mr. Finch, was that he did not in July consent to give the mortgage, for he says in the same connection: "I always thought, and do now, that the giving a mortgage injures a merchants credit," and "thought the giving of a mortgage might injure my credit," and "*I hoped soon to be able to pay them* quite an amount of the debt" and "avoid the necessity of giving the mortgage." (*Pages* 107–8.) And in another place Lakin swears, that he told Johnson in July, 1869, when he suggested that he should give a mortgage that he "did not like to do it then, because if" his "collections should be as good as they ought to be in the fall" he "could probably pay them." (*Page* 77.)

Johnson speaking of the same interview says, in substance, that Lakin wanted an extension, and he proposed, that as the firm of Wager & Fales had dissolved. and their old matters settled and closed up, that if he had not the money to pay he had better give a mortgage on the store, as Wager & Fales could wait. *Lakin offered to turn out notes three dollars to one*, and said that he was perfectly responsible, *more so* than when the debt was incurred, but that times were hard, and that he depended on the farmers for his collections, and that if his matters were closed up under the hammer he would have more than $15,000. On the same day the witness Richardson, a friend of Wager & Fales, told Johnson he thought it was fair for Lakin to give the mortgage, but

that Wager & Fales "should not have any fears about Lakins' responsibility," for though he had not paid promptly, he was responsible and gave his reasons why. Johnson a few days after, tried to sell Lakin more goods, when Lakin said he thought favorable of the mortgage, but did not then make up his mind to give it. Subsequently and about September, Johnsen repeated these things to Wager & Fales—from a memorandum which he had taken, and told them that he thought Lakin was without doubt worth from $10,000 to $15,000, should he be closed up under any circumstances; but that he required some little time to make him easy and comfortable in his business matters, and out of the friendship they had for him, and considering the many dollars he had paid them for goods, *and probably would again*, that they ought to give him a little time, and that would close up the account on the books of Wager & Fales, and give them a 10 per cent. mortgage, and put Lakin in good shape.

Johnson's testimony, 152–3.

Johnson's testimony, pages 152–3

The above, is fully corroborated by Lakin, as we have already shown, and although he in one place on page 106, swears that he did not say to Johnson, that if his matters were closed up under the hammer he would be worth more than $15,000, yet in the same connection he says he don't "recollect" saying so, and on page 122 he says he only meant to say that he was "certain" that he had no "recollection" of saying so. But that Lakin was in the habit of making that statement is evident from different parts of his testimony which we have already quoted. He also says that now looking back on his affairs in 1868–9 after having investigated them his financial condition appears twice as bad to him as it did during those years. (*Page* 121.)

This testimony of Johnson's is corroborated by the witness, Richardson, pages 135–6.

Richardson swears further that up to the time of giving the mortgage he regarded Lakin "as worth over $10,000, over and above his liabilities" and "had no reason to think otherwise." (*Page* 138.)

He further swears that he regarded his condition better in 1869, than in previous years that "with but very few exceptions," from what Lakin said and what he knew, he regarded "his condition as good as the majority of merchants in the same

business throughout the country," and as good as he, Richardson, ever was while he was in the same business. (*Page* 138.)

James Wager corroborates Johnson's testimony, pages 162–4.

He further swears that at the time the notes and mortgage were given, he "supposed Lakin worth many thousand dollars over and above his liabilities;" $15,000 or $20,000 above his liabilities from what he could learn. (*Page* 162.)

Andrew B. Fales corroborates Johnson's testimony, pages 166—173.

He further says that down to the time of giving the notes and mortgage he "supposed, from all he could learn of Lakin. that he was worth from $10,000 to $20,000 over and above his liabilities." (*Page* 166.)

In answer to Lakin's letter of July 9th, 1869, in which he expressed a reluctance to give the mortgage, Wager & Fales wrote him in substance, "that they would wait and see what his fall collections would do for him." Lakin afterwards wrote them that "his fall collections were very poor," when they sent the matter to Richardson to be fixed up by mortgage. (*Page* 77.)

After several weeks delay on account of some misunderstanding as to the length of time some of the notes were to run, the matter was finnally closed as stated.

These negotiations, delays and the length of the extension given clearly show, not only that Wager & Fales were perfectly willing to accomodate Lakin, but that they had perfect confidence in his responsibility and honesty.

The Judge says: "Wager & Fales were told by Mr. Mack, in November, at Sandusky, Ohio, that he thought he could not go through.

The testimony of I. F. Mack, jr., the witness referred to, a general creditor of Lakin, is on pages 31–2, and it will be seen that he gave no such testimony, but he does swear that he "regarded Mr. Lakin as perfectly honest, but so heavily involved that it would be a close question whether he could ever work out of it" but that he "thought if he had time enongh he could pay dollar for dollar," and that Lakin had a short time previously „assured" him "that he had accounts enough due him on his books to pay all his indebtedness."

The witness also swears that Wager stated that he had made up his mind that Lakin was insolvent, and that he believed he would fail in a short time, and that he was going to get his debt secured by mortgage. He said this was in the store of Mrs. A. E. Gale, in Sandusky, Ohio and that Mr. Spencer a brother of Mrs Gale and who had charge of the store introduced him to Wager, and that they talked about an hour.

James Wager says that he was in the store in question at the time mentioned by Mack. and was introduced to Mack by Theodore F. Spencer, a brother of Mrs. Gale, that he talked with Mack from 8 to 12 minutes, that Spencer was present during most of the time of the conversation, if not all of it, he then denies in detail all that Mack swears that he told Wager, and all that Mack swears that he, Wager, told him, and then gives an entirely different version of the conversation. (*Pages* 181--3.)

The substance of it was that Mack expressed doubts of Lakin's ability to meet his engagements, but that Wager told him he considered Lakin perfectly solvent, so much so that they had accomodated him whenever he wished it, that his partner, Fales, had been acquainted with him much longer than he had, and had the utmost confidence in Lakin's ability, and that Lakin was an honest, worthy man, and he believed he would pay his liabilities (*Page* 182.)

THEODORE F. SPENCER swears that he introduced Mr. Mack to Mr. Wager at the time *at the request of said Mack*, and that the conversation between Mack and Wager lasted about ten minutes, he then fully corroborates the testimony of Mr. Wager, except that he cannot remember Lakin's name, but remembers him as "some man who was selling Wager & Fales' stoves somewhere in Wisconsin," and he says Mack expressed some doubt to the person's responsibility, but that he "heard Wager say to Mack, that he considered him (the party they were talking about) perfectly responsible." (*Pages* 183–4.)

We submit upon this evidence that there is nothing in the testimony of Mr. Mack, of Sandusky, Ohio, to weigh a feather in sustaining this decree, and it may therefore be dismissed from further consideration.

The Judge further says that the giving of the security resulted

as he, Lakin, thought it would. It caused an investigation into his affairs by his other creditors, &c." (*Page* 189,)

Even if this were true it would not tend to prove that Wager & Fales had reasonable cause to believe Lakin insolvent but there is not a particle of evidence that Lakin thought the giving of the mortgage would have that result, or did have that result.

On the contrary the investigation was caused by a false dispatch to the Mercantile agency in Chicago, that Lakin had made an assignment. (*Page* 87.)

The witnesses, Mack and Stewart, admit they were reporters for the Agencies and did report him in December 1868. (*Pages* 12—21.)

We submit, the evidence is too vague, conjectural and unsatisfactory to hold as a matter of fact, that Wager & Fales had reasonable cause to believe that Lakin was insolvent, when they received the mortgage.

Can it be possible that they, living in Troy, N. Y., had reasonable cause to believe that Lakin was insolvent, when the complainant's witness M M. McNair, of Brodhead, who built a store by the side of Lakin's store in 1869, which cost him from $5,000 to $6,000 and who loaned Lakin a considerable money in the fall of 1869, swears that he would not have loaned him the money, nor built the building, if he had known Lakin's condition, nor if he had had any doubt that Mr. Lakin would continue to do a large and successful business there in Brodhead?

Page 18, *margin* 34.

Is it fair to hold that Wager & Fales had reasonable cause to believe that Lakin was insolvent at the time the mortgage was given, when, John Nazro & Co., of Milwaukee, the most active of all in this prosecution, and who are particularly represented by the plaintiff, their clerk, who was frequently at Lakin's store during 1869, *felt justified* in selling Lakin goods *on account* in each of the months of September. October, November and December, 1869, to the amount of $512.62, and to receive money from him during the same time on *account* to the amount of $409.20? (*Page* 84.)

Is it fair to hold that Wager & Fales had reasonable cause to believe that Lakin was insolvent, when his list of creditors (*pages* 132–3) shows over $7,000 of indebtedness owing to nearly sixty men in Rock and Green counties who held no security, except that one note was endorsed at the bank and another by Hayner, and yet none of them

exhibiting any anxiety about the safety of their claims, nor attempting to enforce collection?

Can it be that Wager & Fales had reasonable cause to believe that Lakin was insolvent at the time of the mortgage, when Richardson and his father-in-law, Hayner, and his friend Williston, were so firmly convinced of his solvency, that they each indorsed for him more or less during 1869, and two of them were on his paper when he failed?

The only fact which was brought to the knowledge of Wager & Fales which tends to show that they had any cause to believe that Lakin was insolvent, is the mere fact that the debt was nearly two years past due, and this is more than neutralized by the facts, that Lakin's store had cost him more than double what he expected it would, and that a considerable of the Spaulding & Brown note taken for the stoves was unpaid when negotiations were commenced about the mortgage that in the winter of 1868, they had expressed a willingness to let it, run on interest, and that they were friendly to Lakin and willing to accommodate him.

There is no evidence that Wager & Fales had any knowledge that Lakin owed any debt except their own, except that young Mack told Wager at Sandusky that Lakin owed him some.

We claim as a matter of law, that the mere fact, that Wager & Fales held an account against Lakin which had been due nearly two years, under the circumstances stated, is not sufficient to establish as a matter of fact, that they had reasonable cause to believe that he was insolvent. On this point we cite the following authorities:

Shaffer vs. Fritchery, 4 *Bank Reg.* 179.

In Re. Driggs, Ass., vs. Moore, 3 *Bank Reg.* 149.

POINT 2.

Did Wager & Fales when they received the mortgage have reasonable cause to believe that Lakin made it in fraud of the provisions of the bankrupt act?

The circuit court wholly failed to find the affirmative of this question, as a matter of fact. The most the court attempted to do, is to find that Wager & Fales had reasonable cause to believe that Lakin was insolvent when he made the mortgage, and this is found as a "logical conclusion" from the fact that Lakin had reasonable cause to believe he was insolvent when he made the mortgage, "rather than an independent fact or proposition necessary to be found in addition to the other,

except as it naturally flows therefrom," as we have already shown, and from this the court concludes that "the fraud upon the act as to both" Lakin and Wager & Fales, "is complete." (Pages 188–9) After mentioning what the JUDGE claims to be facts to sustain this position he says:

"I therefore think the defendants had reasonable cause to believe Lakin insolvent when they received this mortgage from him, *and that the giving of it was a fraud upon the bankrupt act*, and that it is void."

The substance of all this is, that from the existence of insolvency on the part of Lakin, and that, in the mind of the court Wager & Fales had reasonable cause to believe it existed upon the principles already stated, that therefore "the giving of it was a fraud upon the bankrupt act."

To hold that Wager & Fales when they received the mortgage, had reasonable cause to believe that Lakin made it in fraud of the provisions of the bankrupt act, because they had reasonable cause to believe he was insolvent when he made it, is to hold that the words, "made in fraud of the provisions of the bankrupt act," and the words, "made when he was insolvent," are to receive precisely the same construction—that each phrase expresses the same condition of things, only in a different form, and hence that either could be dispensed with, and the meaning of the clause in question would in no way be effected. This would be a palpable violation of the express words of the statute. The connection of the two phrases by the conjunction "and," clearly shows that the last adds some new conditions to the first. Such a construction would render the words—"made in fraud of the provisions of the act"—superfluous and wholly without significance, and hence in direct violation of the well established rule laid down by Lord Coke and followed for two and a half centuries, to wit: "The good expositor * * *gives effect to every word in the statute*—he does not construe it so, that anything should be vain and superfluous, nor yet makes exposition against express words * * but so expounds it, that one part of the act may agree with the other, and all may stand together."

Potter's Dwarris on Statutes, 197, (*citing*)
11 *Rep.* 34.
10 *Rep.* 105.

That these phrases each have a meaning peculiar to itself and differing from the other, is further evident from the fact that

the clause of the bankrupt act in question, is gnerally construed in connection with the proviso at the close of *Section* 39, which prior to July 27th, 1868, read: "*Provided*, The person receiving such payment or conveyance had reasonable cause to believe that a fraud on this act was *intended*, OR that the debtor was insolvent," and at said last mentioned date, it was amended by striking out the word "or" and inserting in lieu thereof the word "AND." Thus Congress has clearly indicated, that the words "a fraud on this act was intended," and the words "the debtor was insolvent," are expressive of independent facts, or propositions," or conditions each of which was "necessary to be found in addition to the other," and neither of which "naturally flows" from the other, notwithstanding the opinion of the Circuit Court to the contrary.

We have already seen that the word "insolvency" as used in the clause in question of Section 35, and in the act generally, has been defined by this court to have a technical meaning—"to express the inability of a party to pay his debts, as they become due in the ordinary course of business.

Toof vs. Martin 13 *Wall.* 47.

The Circuit Court applied the same rule to this case but added to the above, "according to the usage and custom of the place of his business." It is this technical insolvency, that the Circuit Court talks about all through the opinion, because the Court defines the word in that way, but fails to recognize "its general and popular meaning," as defined by this court in the above case.

The failure to discriminate between this "general and popular meaning" of the word insolvency and its technical meaning, has probably led to much of the confusion which exists in the construction of this law.

These two meanings of the word insolvency, are so widely different, that it is impossible to talk intelligently in regard to insolvency without knowing in what sense the word is used.

It is very evident, that the question whether the mortgage was made by Lakin in fraud of the provisions of the bankrupt act, is entirely a different question than whether at the time he had the ability to pay his debts as they became due in the ordinary course of business; and for Wager & Fales to have

reasonable cause to believe the one, is entirely a different question than for them to have reasonable cause to believe the other.

This court has clearly stated the law on this point in *Toof vs Martin* 13 *Wall.* 51, as follows:

"The act of Congress was designed to secure an equal distribution of the property of an insolvent debtor among his creditors, and any transfer *made with a view* to secure the property, or any part of it, to one, *and thus prevent such equal distribution,* is a transfer in fraud of the act."

It is this very question, as to whether Lakin made the mortgage with intent to prevent this equal distribution of his property, and whether Wager & Fales received it, having reasonable cause to believe that Lakin made it with such intent, which the circuit court has wholly ignored and refused to consider, except in attempting to establish it as "a logical sequence" from the mere existence of technical insolvency. Before Wager & Fales should be adjudged to have had reasonable cause to believe, when they received this mortgage, that Lakin made it "in fraud of the provisions of the bankrupt act," it should be established as a fact, that Lakin knew or at least believed, that his "entire property and assets," were insufficient to pay his debts, or in other words that he was insolvent in the "general and popular meaning" of the word, and acting upon such knowledge or belief, he made the mortgage "with the view to give" Wager & Fales a preference—an advantage over his other creditors; and that Wager & Fales when they received it, had reasonable cause to believe that Lakin had so acted with such intent. We are not contending that a secured creditor must have actual knowledge or even belief, but we do contend that he must have "such reasonable cause, as would induce the belief in the mind of an intelligent capable business man," that the debtors "property and assets" are less in value than his liabilities, and hence that any transfer or mortgage which would secure to him more than his proportionate share, would prevent an equal distribution of the estate, and would therefore be in fraud of the act. In such case the secured creditor would be brought within the purview of the proviso of Section 39, which we have already quoted, and could be said to have "had reasonable cause to believe that a fraud on this act was *intended*, and that the debtor was insolvent." In the case at the bar, the evidence is overwhelming that Wager, Fales, Johnson and Richardson, were at the time of receiving the mortgage each and all convinced from what they knew in

regard to Lakin, and what he had told them, that he was worth from $10,000, to $20,000, over and above his debts, and there is no evidence in the case tending to show that they had any reasonable cause to believe that he owed any considerable amount of debts aside from their own, much less that the amount of his debts were in excess or equal to the value of his property.

The evidence in this case shows that Wager & Fales were at the time wholesale merchants doing an extensive business all over the country, and it is fair to presume, that they were intelligent capable business men, and as such are supposed to have had some knowledge of the bankrupt law, and hence we must either conclude, that they did regard Lakin perfectly responsible during the nearly two years they waited upon him for their pay, or that they were wholly destitute of business capacity.

Since Wager & Fales were intelligent capable business men, it follows, that if they had "*reasonable cause* to believe" that Lakins' property was insufficient to pay his debts, then they *did believe* it, which cannot be true unless both of them, and Johnson, Richardson and Lakin have committed deliberate perjury, and this, the court is called upon to assume in the absence of all evidence, except the witness Isaac F. Mack, Jr., of Sandusky, Ohio, who is flatly contradicted by the witnesses Wager and Spencer.

But this court, in the case of *Voorhees assignee in Bankruptcy vs. Bonesteel*, 5 *Chicago Legal News*, 241. being number dated Feb. 15, 1873, has held, that "where the answer" to the "bill in equity positively denies the allegations contained in the bill, a court of equity cannot decree against such denials in the answer upon the testimony of a single witness. Where the denial is distinct, there must be two witnesses or one witness and corroborative circumstances." This applies the ordinary rule to equity cases in bankruptcy. The answer in this case is on oath and of this character.

It is alleged in the bill that Wager & Fales had reasonable cause to believe that "Lakin was insolvent, or contemplated insolvency," but it is nowhere alleged in the bill that they "had reosonable cause to believe" that the mortgage was "made in fraud of the provisions of the bankrupt act." The most that is alleged in this regard, is as follows: "and your orator also *charges* and *insists* that the same was *made* with a view to evade the said bankrupt act," (page 2) but this

does not charge Wager & Fales with having any cause, to believe it was so made, much less "reasonable cause."

SHIPMAN J. of Connecticut, in his able opinion, (*Re. Wadsworth, Assignee of Treadwell, bankrupt, vs. Tyler*, 2 *Bank Reg.* 101) and to which we invite the special attention of this court, held: That notwithstanding the creditor—Tyler—knew that Treadwell was insolvent, using the term in its largest sense, that he "owed him not only more than he could then pay, but more than his whole assets were worth if disposed of under the most favorable circumstances, and at their full value," yet that Tyler took the coal "in good faith under his bill of sale, to secure as far as it would go, his own debt, and to protect himself from the consequences of Treadwell's mismanagement and improvidence in his business, *and not from any design to defraud other creditors*, though in fact his appropriation of the coal must have the effect, if sustained by the court, to deprive them of the debts, as it will leave the estate substantially without assets." (*Page* 102.)

The court then construes the word "or" which was formerly in the proviso of section 39, above mentioned as though it were "*and*" on account of the controling provisions of section 35 in the clause in question. The court then argues the question at length and *inter alia* says:

"But under this section (§ 35) of the bankrupt act, they (the courts) have no authority to declare a transfer void, *unless the party who receives it*, has reason to believe that it was INTENDED *to prefer one creditor over another, or in some way, to defeat or delay the operation of the Act*," See also,

Lee, Asignee, vs. F. A. G. S. I., 3 *Bank Reg.* 53.

In Armstrong Assignee vs. Rickey's 2 *Bank Reg.* 105.

Judgment was entered on note past due and warrant of attorney, March 18, 1868, in favor of the Rickey's, and a levy made upon real estate the same day, and March 19th, 1868 the petition was filed in bankruptcy, and the court held that as the debtor at the date of the note "had a good reputation for solvency and thought himself perfectly solvent," and "had no suspicion or knowledge of his insolvency until some ten days before the filing of his petition," and as "there was no proof whatever that the Rickey's knew or had reason to believe him to be insolvent, down to March 18th, 1868, the date of their judgment," and there being "but very slight evidence that they even knew it then, not until

the next day"—that therefore the debt and judgment of the Rickeys was valid and "not given by way of preference" and hence the levy was sustained.

Where the preferred creditor has no cause to believe any guilty intent on the part of the debtor the law will not deprive him of that preference since he would not be connected with the fraud.

Darby's T. F. vs. B. S. & I., 4 *Bank Reg.* 195, Per *Dillon, Treat and Krekel, J. J.*

To conclude we claim that the clause of § 35 in question requires

1st. That the debtor shall know or believe he was insolvent or acting in contemplation of insolvency, at the time of doing the act complained of and that the person who received the benefit "had reasonable cause to believe," that he had such knowledge or belief when he performed the act complained of, AND

2d. That the debtor did the act complained of *with a view* to give a preference—with the *intent* to give one creditor an advantage over another—and that the person benefitted had reasonable cause to believe at the time that the debtor acted with such view—such intent. That is to say the preferred creditor must have reasonable cause to believe the condition of things which the debtor is required to *know or believe and intend.*

III

The decree should be reversed in any view of the case, since the answer, which is on oath, sets up a complete defense to the bill upon the merits, and the plaintiff has omitted to file any replication to the same as appears by the record. (*Pages* 6 and 196.)

Equity Rule 66.

J. B. CASSODAY & WILLARD MERRILL,
Of Counsel for defendants,
Janesville, Wis.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 388.

THE KANSAS PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN H. PRESCOTT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

FILED MAY 27, 1872.

SUPREME COURT OF THE UNITED STATES.

No. 388.

THE KANSAS PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Kansas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Kansas Pacific Railway Company and John H. Prescott, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution,

2 or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Kansas Pacific Railway Company, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of April next, in the said Supreme Court, to be then and there

3 held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court, the 25 day of January, A. D. 1872.

A. S. THOMAS,

[SEAL.] *Clerk of the Circuit Court of the United States for the District of Kansas, 8th Circ't.*

Allowed by—

S. A. KINGMAN,

Chief Justice of the Supreme Court of Kansas.

(Indorsed) 645. The Kansas Pacific Railway Co. vs. J. H. Prescott. Filed Jan'y 26, 1872. A. Hammatt, cl'k sup. court.

4 To the Honorable Samuel A. Kingman, chief justice of the supreme court of the State of Kansas:

Your petitioner, the Kansas Pacific Railway Company, sheweth unto your honor that, heretofore, to wit, at our present January term of the supreme court of the State of Kansas, by the judgment and consideration of said court, final judgment was entered therein in a suit pending in said court, wherein your petitioner was plaintiff in error and J. H. Prescott was defendant in error. That in said suit there was drawn in question the right and power of the State of Kansas to impose and assess taxes upon the lands granted by the United States to your peti-

tioner by act of Congress, being an act entitled "An act, etc.," approved July 1, 1862, and the subsequent acts of Congress amendatory thereof, before said lands were listed and selected, and before the fees and costs were paid for such selection, and for patents by your petitioner; and that said decision was adverse to the rights and exemption
5 claimed by your petitioner, and that it so appears of record; and further, that said decision was rendered by the highest court of the State in which such decisions could be had; and your petitioner being desirous to present a writ of error to the supreme court of the United States to reverse said decision, prays your honor to allow the writ of error and affix your signature to the citation to the defendant for that purpose.

Know all men by these presents that we, John P. Usher, are held and firmly bound unto John H. Prescott, in the just and full sum of five hundred dollars, to be paid to John H. Prescott, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 26th day of January, 1872.

Whereas lately, at the January term, A. D. 1872, of the supreme
6 court of the State of Kansas, in a suit depending in said court, between the Kansas Pacific Railway Company and John H. Prescott, judgment was rendered against the said Kansas Pacific Railway Company; and the said Kansas Pacific Railway Company having obtained and filed a copy thereof in the clerk's office of said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John H. Prescott, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of April next:

Now, the condition of the above obligation is such, that if the said Kansas Pacific Railway Company shall prosecute its said writ of error to effect, and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

J. P. USHER. [SEAL.]

Sealed and delivered in presence of and approved by—
SAMUEL A. KINGMAN,
Ch. Justice.

7 The United States of America to John H. Prescott, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of April next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein the Kansas Pacific Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error is mentioned, should not be corrected, and why speedy justice should not be done to the parties on that behalf.

Witness the Honorable Samuel A. Kingman, chief justice of the supreme court of the State of Kansas, this the 26th day of January, in the year of our Lord one thousand eight hundred and seventy-two.

SAMUEL A. KINGMAN,
Ch. Justice.

8 Due service of the above citation is hereby acknowledged for John H. Prescott, defendant in error, this Jan. 31st, 1871.

J. G. MOHLER,
Att'y of Record for Def't in Error, in the Sup. Court of the State of Kansas.

(The same is endorsed:) Filed Jan'y 26th, '72. A. Hammatt, cl'k sup. court.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State Kansas, greeting:

Because, in the record and proceedings, as also as in the rendition of the judgment of a plea which is in the said court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Kansas Pacific
9 Railway Company and John H. Prescott, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws, of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause, of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Kansas Pacific Railway Company, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done
10 to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday of April next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the said Supreme Court, the 25th day of January, A. D. 1872.

[L. S.] A. S. THOMAS,
Clerk of the Circuit Court of the United States For the District of Kansas, 8th Circ't.

11 Pleas had in the supreme court of the State of Kansas, at its regular January session of said court, held in the supreme court rooms, in Topeka, Kansas, on and from the 2d day of January, A. D. 1872. Present at said court, Hon. S. A. Kingman, C. J.; Hon. D. M. Valentine, J.; Hon. D. J. Brewer, J.

Be it remembered that, heretofore, to wit, on the 7th day of January, A. D. 1871, the Kansas Pacific Railway Company filed in said supreme court their certain petition in error and transcript and record of the

proceedings of the eighth judicial district court sitting within and for the county of Saline, in the State of Kansas, against John H. Prescott, of which petition in error the following is a true copy:

THE STATE OF KANSAS,
Supreme Court, sct:

THE KANSAS PACIFIC RAILWAY COMPANY, plaintiff in error,
vs.
JOHN H. PRESCOTT, DEFENDANT IN ERROR.

Petition in error.

12 The plaintiff in error says that, on the 30th day of December, A. D. 1870, the said defendant in error recovered a judgment against the said plaintiff in error by the consideration of the district court, sitting in and for Saline County, Kansas, by which the said district court dismissed the plaintiff's petition, and gave judgment in favor of the defendant in error for the costs of the action, as will more fully appear from the transcript of the record and proceedings in said case herewith filed, reference being thereto had.

The said court erred in giving judgment as aforesaid, in this, to wit:

1st. The said court erred in finding the issues with the defendant in error instead of for the plaintiff in error upon the agreed statement of facts.

2d. The court erred in giving judgment for the defendant in error instead of for the plaintiff in error.

Wherefore the plaintiff in error prays the court to reverse the
13 said judgment and order that judgment be entered for the plaintiff in error in the district court.

McCLURE & HUMPHREY,
Att'ys for Pl'ff in Error.

(The same is endorsed:) Supreme court. Kas. P. R. W. Co., plaintiff in error, vs. John H. Prescott, def't in error. Petition in error. Filed Jan'y 7th, 1871. A. Hammatt, clerk.

KANSAS PACIFIC RAILWAY COMPANY
vs.
JOHN H. PRESCOTT.

Bill of exceptions.

In the district court, Saline County, State of Kansas, September term, 1870.

Be it remembered that, on the 30th day of December, 1870, this case came for hearing upon the petition of the plaintiff, which
14 is in words and figures as follows, to wit:

THE KANSAS PACIFIC RAILWAY COMPANY, plaintiff,
vs.
JOHN H. PRESCOTT, DEFENDANT.

The plaintiff says:

1st. That it has the legal title to and is in the peaceable possession of the following-described real estate situate in the said county

of Saline and described as north half of the southwest quarter, and west half of southeast quarter of section 3, township 13, range 1 west, 160 acres; and the said plaintiff further says that the said John H. Prescott sits up and claims an estate and interest in and to the said premises adverse to the estate and interest of the plaintiff, so as aforesaid averred.

The said plaintiff therefore prays that the said John H. Prescott may be compelled to show his title, and that it may be determined to be null and void as against the title of the plaintiff.

E. W. DENNIS, AND
McCLURE & HUMPHREY,
Attorneys for Pl'ff.

15 And the answer of the said defendant, which is in words and figures as follows, to wit:

JOHN H. PRESCOTT, DEF'T,
ads.
THE KANSAS PACIFIC RAILWAY COMPANY, PL'FF.

Comes now John H. Prescott, the said defendant, and for answer to the petition heretofore in the above-entitled cause filed, admits that he has and claims a certain estate, interest, and title in and to the lands in said petition described, but he denies each and every other allegation in said petition contained, and each and every part thereof.

And for further answer to the said petition this defendant avers that, heretofore, to wit, on the 1st day of March, A. D. 1868, the said plaintiff was the owner in law and was in possession of the lands aforesaid; and that, on the date last aforesaid, the said lands *was* subject to taxation in the county of Saline and State of Kansas aforesaid.

And further, for that, afterwards, during the year aforesaid
16 the said lands were duly listed as the property of the Union Pacific Railway Company, eastern division, which said corporation was and is identical, one and the same, with the said plaintiff, and thereafter were valued, as required by law, each at the sum of three hundred and sixty ($360) dollars in money, a tabular statement of which valuation, among others, was returned, duly certified, to the office of the county-clerk of said Saline County, in time and manner as prescribed by law; and further, for that, afterwards, to wit, on the 6th day of July, A. D. 1868, the valuation aforesaid of said lands were, by the board of equalization of said county of Saline, reduced 25 per cent, to wit, to the amount of two hundred and eighty dollars ($280) each—notice of the meeting of which board aforesaid had before that time been duly given as required by law. And further, for that, after the adjournment of the said board of equalization, an abstract of the assessment-roll of said county was, by the county-clerk of said county, duly forwarded to the state-auditor of said State, and that the said abstract, among others, was duly examined by the State board of equalization of said State, and the respective
17 amount of State-tax apportioned to said Saline County was, by the secretary of said State of Kansas, duly certified to the county-clerk of said county; and further, this defendant avers that, afterwards, to wit, on the 6th day of September, A. D. 1868, the board of county-commissioners of said county levied a tax of ten

mills on all the taxable property in said county for county purposes, according to law.

And further, that the various other organizations authorized by law to levy taxes in said county for the year aforesaid, duly certified the respective amounts of their several levies to the county-clerk aforesaid, in time and manner as prescribed by law, and that the lands described in said petition were by the said county-clerk charged with the several taxes in sums as required by and in accordance with the various levies aforesaid, and placed on the tax-roll of said Saline County for the year 1868, according to law; all of which will more fully appear by reference to two certain tabular statements of said tax-charge and transcript of said tax-roll for the year aforesaid, which are hereunto attached, marked, respectively, Exhibit*ed* "A" & "B," and made a part of this answer.

This defendant further avers that, thereafter said tax-roll,
18 certified as required by law, was, by the county-clerk, duly delivered to the county-treasurer of said county.

And that thereupon the said treasurer gave due notice of the amounts and rates of the several levies aforesaid, respectively, and of all and every of the times and periods by him then appointed for his attendance at the various places in said county, as required and specified by law, for the purpose of receiving the same; and further, that the said county-treasurer did so attend the various places aforesaid, at the time and in the manner in said notice mentioned and described, but that the said taxes, amounting in all to the sum of ten dollars and fifty cents ($10.50) upon each parcel of land aforesaid, though legally due and owing upon the said premises, were not then paid, and remained so as aforesaid unsatisfied and unpaid until the 10th day of January, A. D. 1869, after which a penalty of one dollar and five cents was added to the same as aforesaid mentioned of taxes on said premises, as appears by said Exhibit "A" & "B," according to law.

And further, for that, afterwards, to wit, the said lands were
19 each and both duly entered by the said county-treasurer in the delinquent tax-list for the year aforesaid, to wit, A. D. 1868, and with others duly advertised for sale by the said county-treasurer in accordance with law.

This defendant further avers that, afterwards, to wit, on the 28th day of June, A. D. 1869, the said lands were, by the said county-treasurer, duly offered for sale, with others, and were then and there bid off by the treasurer of said Saline County for the said county, according to law, for the amount of the said taxes and penalty and accrued cost, amounting in all to the sum of eleven dollars and eighty-five cents ($11.85) for each parcel of land aforesaid. And further, that, afterwards, to wit, on the 30th day of June, A. D. 1869, the said north half of the southwest quarter of section (3) three, in township (13) thirteen south, of range (1) one west, was, by the county-clerk of said county, duly sold and assigned to him, this defendant, for the sum of twelve dollars and eighty-five ,
($12.85,) being certificate No. 60 of tax-sale of the delinquent tax-
20 list of the year aforesaid, *and* of which will more fully appear by reference to the said tax-certificate of said purchase, a true copy of which is hereto attached, marked Exhibit "C," and made a part hereof, whereby he, this defendant, became and now is the lawful owner of said premises.

And further, for that, afterwards, to wit, on the said 30th day of June, A. D. 1869, the said west half of the southeast quarter of see-

tion (3) three, in said township and range last aforesaid, was, by the county-clerk of said county, duly sold and assigned to him, this defendant, for the said sum of twelve dollars and eighty-five-cents, ($12.85,) being certificate No. 6 of tax-sales of the delinquent tax-list for the year aforesaid, *and* of which will more fully appear by reference to the said tax certificate, a copy of which, true and correct, is hereto attached, marked Exhibit "D," and made a part hereof, whereby he, this defendant, became and now is the lawful owner of said premises.

Wherefore the defendant prays that the nature and claim of the parties in and to the said lands may be respectively determined, and that the estate of the said defendant may be decreed to be superior
21 to the estate of the said plaintiff; that the defendant may be adjudged to be the lawful owner of said premises; and for such other and further relief as equity may demand in the premises.

J. H. PRESCOTT,
G. G. LOWE,
Co. Att'y, and Att'y for Defendant.

EXHIBIT "A."

$ .00] [No.

TREASURER'S OFFICE, SALINE COUNTY, KANSAS,
Salina, , 18 .

Received of $\frac{}{100}$ dollars, being the amount in full of all taxes for the year 1868, on the following-described real estate and personal property:

Description of land.	Sec.	Town.	Range.	Val.	Kind of tax.	$ Cents.
N. ½ S. W. ¼	3	13	1	280	State-tax	1 54
Levy					County	1 96
State, 5½ mills					Co.-bonds	84
County, 7 "					Township	56
Bond int., 3 "					School-dist. tax	5 60
Township, 2 "					Penalty	1 05
School dist., 20 "					Advertising	25
					Cost of sale	05
						11 85

I hereby certify that the above is a correct transcript from tax-roll for 1868.

S. AMRINE, *Treasurer.*
By C. E. TAMKEN, *Dep'ty.*

22 $ .00.] [No.

TREASURER'S OFFICE, SALINE COUNTY, KANSAS,
Salina, , 18 .

Received of $\frac{}{100}$ dollars, being the amount in full of all taxes for the year 1868, on the following-described real estate and personal property:

Description.	Section.	Town.	Range.	Val.	Kind of tax.	$ Cts.
W. ½ S. E. ¼	3	13	1	280	State-tax	1 54
Levy					County-tax	1 96
State, 5½ mills					Co.-bonds	84
County, 7 "					Township-tax	56
Bond int., 3 "					School dist.-tax	5 60
Township, 2 "					Penalty	1 05
School dist., 20 "					Advertising	25
					Cost of sale	05

I hereby certify that the above is a correct transcript from the tax-rolls for 1868.

S. AMRINE, *Treasurer.*
By C. E. TAMKEN, *Deputy.*

EXHIBIT B.

$12 $\frac{85}{100}$] [No. 60.]

TREASURER'S OFFICE, SALINE COUNTY, KANSAS,
June 30th, 1869.

This is to certify that J. H. Prescott has this day bought the N. ½ of the S. W. ¼ of sec. 3, town. 13 S., range 1 west, 80 acres, county of Saline, & State of Kansas, sold for the taxes, on the 28th day of
23 June, 1869, for the amount of twelve dollars and eighty-five cents. The holder of this certificate will be entitled to a deed the 28th day of June, 1872.
Bid off. at $12.35.

S. AMRINE, *County-Treasurer.*
By D. W. HENDERSON, *Deputy.*

(Endorsed on the back:)
Assigned to J. H. Prescott.

D. BEEBE, *Co.-Clerk.*

Received from J. H. Prescott, $6.50 in full of all taxes on the within-described property for the year 186 .

S. AMRINE, *Treasurer.*
By C. E. TAMKEN, *Deputy.*

TREASURER'S OFFICE,
Saline County, Kansas, June 30th, 1869.

This is to certify that J. H. Prescott, has this day bought the W. ½ o the S. E. ¼ of sec. 3, town 13 south, range 1 west, county of Saline, and State of Kansas, sold for taxes on the 28th day of June, 1869, for the amount of twelve dollars and thirty-five cents. The holder of this certificate will be entitled to a deed, the 28th day of June, 1872.
Bid off at $12.35.

S. AMRINE, *County-Treasurer.*
By D. W. HENDERSON, *Deputy.*

24 (The same is endorsed:)
Assigned to J. H. Prescott.
[L. S.] D. BEEBE, *Co.-Clerk.*

Received from J. H. Prescott, $7.80 in full of all taxes on the within-described property for the year 1869.

S. AMRINE, *Treasurer.*
By C. E. TAMKEN, *Deputy.*

And reply thereto of the plaintiff, which is in words and figures, as follows, to wit:

KANSAS PACIFIC RAILWAY COMPANY, PLAINTIFF,
vs.
JOHN H. PRESCOTT, DEFENDANT.

Reply.

The plaintiff, replying to the defendant's answer, denies each and every allegation therein.

E. W. DENNIS & McCLURE & HUMPHREY,
Att'ys for Plaintiff.

And the said parties agree to, and do, waive a trial by jury,
25 and submit the issues to the court upon the following agreed statement of facts, to wit:

KANSAS PACIFIC RAILWAY, PLAINTIFF,
vs.
JOHN H. PRESCOTT, DEF'T.

Agreed statement of facts.

The said plaintiff, by their attorneys, McClure & Humphrey, and the defendant, by his attorney J. G. Mohler, agree that it is the fact that, at the commencement of this suit, the said plaintiff was the owner and in the possession of the land described in the plaintiff's petition; that said lands were assessed for taxation in and for the year 1868, and the taxes for county, State, township, and school purposes for the year were duly and regularly levied thereon; that said taxes were not paid, and that the said lands were duly advertised and sold by the county-treasurer of Saline County, for the said taxes, and for want of other bidders was bid in by county-treasurer for Saline County for the said taxes and charges thereon; that the tax-certificate was afterwards, on the 30th day
26 of June, 1869, assigned by the county-clerk of said county to the defendant for the taxes, charges, and interest thereon; that the various proceedings in relation to the assessment-tax, levy, sale of said land, and assignment were in substantial conformity to the law.

It is further agreed to be the fact that the plaintiff derived title solely under and by virtue of the provisions of act of Congress approved July 1st, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean," &c.

That at the time said lands were assessed for taxation as aforesaid, the plaintiff had constructed and completed the section of 40 miles of railroad within which said lands lie, and that the commissioners appointed by the President of the United States under said act of Congress, had favorably reported thereon, and the same had been approved by the President of the United States; that the said lands had not been finally located or entered at the United States land-office of the
27 district in which the same lie by the said plaintiff' nor the sum of one dollar per quarter-section paid by said plaintiff company into said local land-office upon any such location; that no patent for the said land has been issued by the Government of the United States to said company, the plaintiff; that the said plaintiff company, had caused the said land to be valued or appraised, but had done no other act except those hereinbefore mentioned, to acquire title to the same. It is admitted that the said plaintiff company had performed all the acts necessary to be done to entitle it to a patent for the said lands except as above stated, making the final entry, and paying the one dollar per quarter-section as provided by law.

McCLURE & HUMPHREY,
Attorneys for Plaintiff.
J G. MOHLER,
Att'y for Defendant.

And the said case was argued by counsel; and the court thereupon rendered the following judgment, to wit:

28 THE KANSAS PACIFIC RAILWAY COMPANY
vs.
JOHN H. PRESCOTT.

Judgment for def't on agreed statement.

And now, to wit, December 30th, 1870, comes the said plaintiff, by McClure and Humphrey, its attorneys, and also comes the defendant, by J. G. Mohler, his attorney, and the issues herein are submitted to the court on an agreed statement of facts; and, thereupon, the court do find that the said plaintiff was, at the commencement of this action, the owner and in possession of the land and premises described in the plaintiff's petition; and that the said plaintiff was the owner of the same in 1868, at the time the same was assessed for taxation, and the taxes were thereon levied for that year; that the said land was legally assessed for taxation for 1868, under the laws of Kansas, and the taxes for that year duly levied on the same; and that the said taxes became a legal charge and lien on the said lands; that the said land was
29 legally sold for the non-payment of the said taxes, and the certificate of sale for the same duly assigned to the defendant; that the said taxes and subsequent charges upon the said land have not been paid; and that the said tax-certificate is, and was, at the commencement of this action, in full force and effect: It is, therefore, ordered and considered, *that* by the said court, that the petition of the plaintiff be dismissed, and that the defendant recover of the plaintiff his costs herein expended, taxed at $; and hereof let execution issue.

To all of which findings (except such as were heretofore admitted) and rulings and judgment of the court the plaintiff excepts.

Approved.

WM. H. CANFIELD, *Judge.*

And afterwards, on said day, the said plaintiff moved the said court for a new trial in said case; which motion is in words and figures as follows, to wit:

KANSAS PACIFIC RAILWAY COMPANY, PLAINTIFF,
vs.
JOHN H. PRESCOTT, DEFENDANT.

Motion for new trial.

30 And now, to wit, December 30th, 1870, comes the said plaintiff company, by McClure & Humphrey, its attorneys, and move for a new trial in this case on the grounds:

1st. That the findings of the court are contrary to the agreed statement of facts, upon which said case was submitted.

2d. The judgment of the said court is not sustained by sufficient evidence, and is contrary to law.

McCLURE & HUMPHREY,
Attorneys for Plaintiff.

To J. G. MOHLER,
Att'y for Def't.

Which motion being argued by counsel and considered by the court is overruled. The order of the court is in words and figures as follows, to wit:

KANSAS PACIFIC RAILWAY COMPANY
vs.
JOHN H. PRESCOTT.

Order overruling motion for a new trial.

And now, December 30th, 1870, comes the said plaintiff company, by McClure & Humphrey, its attorneys, and also comes
31 the said defendant, by J. G. Mohler, his attorney, and the said motion of the plaintiff for a new trial in this case upon the ground in said motion stated, came on for a hearing, and is argued by counsel; and, being considered by the said court, it is, by said court, ordered that the said motion for a new trial be overruled; to which ruling and order of the court the plaintiff excepts.

WM. H. CANFIELD, *Judge.*

To which ruling of the court the plaintiff then and there excepted, and now prays that this his bill of exceptions may be signed and sealed, and be made a part of the record in said case; which is accordingly done this 30th day of December, A. D. 1870.

W'M H. CANFIELD, *Judge.*

THE STATE OF KANSAS,
County of Saline, ss:

I, A. S. Norton, clerk of the district court in and for said county and State, do hereby certify that the foregoing is a true and correct
32 transcript of all files and records of proceedings had in the above entitled cause, as appears of record in my office.

In witness whereof I have hereunto set my hand and affixed my official seal at Salina, Kansas, this 3d day of January, A. D. 1871.

[L. S.] A. S. NORTON, *Clerk.*

(The same is endorsed:) Filed Jan'y 7th, 1871. A. Hammatt, clerk.

And thereupon, upon the filing of the said petition in error and transcript of the record of the proceeding in the court below, to wit, Jan'y 7th, 1871, a summons in error was issued out of said court; which summons is in the words and figures following, to wit:

Supreme court.

THE STATE OF KANSAS, *ss:*

To the sheriff of Saline County, greeting:

You are hereby commanded to notify John H. Prescott that the Kansas Pacific Railroad Company did on the 7th day of January,
33 A. D. 1871, file in the clerk's office of the supreme court of Kansas, his petition in error and transcript of record, the object of which is to obtain the reversal of a certain judgment rendered against them by the district court for the 8th judicial district, State of Kansas, sitting within and for the county of Saline, at the September term thereof, A. D. 1870, in an action pending before said court, wherein the said Kan-

sas Pacific Railroad Company was plaintiffs and the said John H. Prescott was defendant.

You will make due return of this summons in error on or before the 18th day of January, A. D. 1871.

Witness my hand and the seal of said court, affixed at my office in the city of Topeka, this 7th day of January, A. D. 1871.

[L. S.] A. HAMMATT, *Clerk.*

(The same is endorsed :)

SALINA, *Jan'y* 11, '71.

Service of the within summons acknowledged.

J. G. MOHLER,
Att'y for Prescott.

34 (The same is further endorsed :) Supreme court. The State of Kansas. K. P. R. W. Co., vs. John H. Prescott. Summons in error. Issued Jan. 7th, 1871. Returnable Jan. 18th, 1871. Filed Jan. 13th, 1871. A. Hammatt, clerk. Dennis, McClure & Humphrey, att'y for pl'ff.

And thereupon, afterwards, to wit, at the January term of said supreme court, A. D. 1871, among others, the following was had, to wit :

WEDNESDAY, *March 1st*, 1871.

Court met pursuant to adjournment. Present as before.

KANSAS PACIFIC RAILWAY COMPANY, PL'FF,
vs.
JOHN H. PRESCOTT, DEF'T. } 644.

This cause is continued till the next term of this court.

35 And be it further remembered that, thereafter, to wit, at the July term of said court, A. D. 1871, among other proceedings had therein, the following was had, viz :

MONDAY, *July 24th, A. D.* 1871.

Court met pursuant to adjournment.
Present, said court.

THE KANSAS PACIFIC RAILWAY COMPANY
vs.
JOHN H. PRESCOTT. } 645.

This cause came on to be heard on petition in error and transcript of the record of the district court of Saline County, and was submitted on briefs of counsel, Messrs. E. W. Dennis & McClure & Humphrey, for pl'ff in error, and J. G. Mohler, esq., for defendant in error, and taken under advisement by the court.

And be it further remembered that, thereafter, at the January term, A. D. 1872, of said court, to wit, on the 16th day of January, A. D. 1872, said cause came on for decision. And thereupon the following proceedings were had, as appears by the journals of said court of said day, to wit :

36 THE KANSAS PACIFIC RAILWAY COMPANY, *vs.* JOHN H. PRESCOTT. } 645.

This cause came on for decision, whereupon Brewer, J., delivered the opinion of the court, and it is ordered and adjudged that the judgment of the court below be affirmed, with costs, and hereof let execution issue.

All the justices concurring.

And thereupon, to wit, on the 16th day of January, A. D. 1872, the following opinion of said court was delivered in said cause by said court per Brewer, J., to wit:

STATE OF KANSAS, *Supreme Court, sct:*

KANSAS PACIFIC RAILWAY CO. *vs.* JOHN H. PRESCOTT.

Opinion.

By the court. BREWER, J.

37 This case presents the same questions as the case of the same plaintiff vs. Charles C. Culp, just decided, except that it appears from the agreed statement that the cost of surveying, selecting, and conveying the land in controversy had been paid at the time the tax proceedings were commenced. This, therefore, presents a stronger case for affirmance.

The judgment will be affirmed.

All the justices concurring.

And thereupon, to wit, on the 16th day of January, A. D. 1872, pursuant to the order and judgment of said court above set forth, the following mandate of said supreme court was issued to the said court below, to wit: the district court of the 9th judicial district, sitting in and for the County of Saline and State of Kansas; which said mandate is in words and figures as follows, to wit:

SUPREME COURT, *The State of Kansas, ss:*

To the district court within and for the 8th judicial district, Saline County, Kansas, greeting:

38 Whereas in a certain civil action lately pending before you, wherein the Kansas Pacific Railway Company was plaintiff, and John H. Prescott was defendant, a judgment was rendered by you in favor of the said John H. Prescott, on a transcript of which judgment and record said Kansas Pacific Railway Company prosecuted a petition in error in the supreme court within and for the State of Kansas.

And whereas, at the January term of said supreme court, A. D. 1871, on consideration of the said petition in error, it was ordered and adudged by the said supreme court that the said judgment of the district court be affirmed:

You are therefore commanded that, without delay, you cause execution

to be had of the said judgment of the supreme court, according to law, the said petition in error to the contrary notwithstanding.

Witness my hand and the seal of said supreme court affixed at my office, in the city of Topeka, on the 16th day of January, A. D. 1872.

[L. S.] A. HAMMATT, *Clerk.*

39 STATE OF KANSAS, *Supreme Court, ss:*

I, Abram Hammatt, clerk of the supreme court of the State of Kansas, do hereby certify that the foregoing is a true, full, and correct transcript of the citation, bond, writ of error, petition in error, transcript of the record of the district court, (as exhibits thereto attached,) journal entries, orders, and jud'ments, and all proceedings had in said supreme court, or by authority thereof, in said above-entitled cause, as appears of record in my office.

As witness my hand and official seal hereto attached, this 6th day of March, A. D. 1872.

[SEAL.] A. HAMMATT,
Clerk Supreme Court of the State of Kansas.

(Indorsement on cover:) No. 388. The Kansas Pacific Railway Company, plaintiff in error, vs. John H. Prescott. Kansas sup. court. Filed 27th May, 1872.

UNITED STATES OF AMERICA,
SUPREME COURT.

The Kansas Pacific Railway Company,

Plaintiff in Error,

vs.

CHARLES C. CULP,

Defendant in Error.

SAME, *vs.* JOHN H. PRESCOTT.

Brief for Plaintiff in Error.

JOHN P. USHER,

For Plaintiff.

UNITED STATES OF AMERICA.

SUPREME COURT.

THE KANSAS PACIFIC RAILWAY COMPANY,
vs.
CHARLES C. CULP.
} Error to the Supreme Court of Kansas.

SAME,
vs.
JOHN H. PRESCOTT,
} SAME.

Brief for Plaintiff in Error.

In these cases the construction of certain acts of Congress was in issue, and the Supreme Court of Kansas gave them such construction as to render them inoperative in the particulars hereinafter stated.

Congress, July 1st, 1862, passed an act entitled "An Act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to se-

cure to the government the use of the same for postal, military, and other purposes."

The following sections and parts of sections, embrace so much of said act as will, in all probability, be found necessary to consider in determining the question now in issue:

SEC. 3. *And be it further enacted*, That there be, and is hereby, granted to the said company for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores thereon, every alternate section of public land, designated by odd numbers to the amount of *five* alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of *ten* miles on each side of said road, not sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed: *Provided*, That all mineral lands shall be excepted from the operation of this act; but where the same shall contain timber, the timber thereon is hereby granted to said company. And all such lands, so granted by this section, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

SEC. 4. *And be it further enacted*, That whenever said company shall have completed forty consecutive miles of any portion of said railroad or telegraph line, ready for the service contemplated by this act, and supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turnouts, watering places, depots, equipments, furniture, and all other appurtenances of a first class railroad—the rails and all the other iron used in the construction and equipment of said road to be American manufacture of the best quality—the President of the United States shall appoint three commissioners to examine the same and report to him in relation thereto; and if it shall appear to him that forty

consecutive miles of said railroad and telegraph line have been completed and equipped in all respects as required by this act, then, upon certificate of said commissioners to that effect, patents shall issue conveying the right and title to said lands to said company, on each side of the road as far as the same is completed, to the amount aforesaid; and patents shall in like manner issue as each forty miles of said road and telegraph line are completed, upon certificate of said commissioners.

* * * * * * * *

SEC. 5. *And be it further enacted*, That for the purposes herein mentioned, the Secretary of the Treasury shall, upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph, in accordance with the provisions of this act, issue to said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per centum per annum interest, (said interest payable semi-annually,) which interest may be paid in United States treasury notes or any other money or currency which the United States have or shall declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States, as hereinafter provided, of the amount of said bonds so issued and delivered to said company, together with all interest thereon, which shall have been paid by the United States, the issue of said bonds and delivery to the company shall *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures, and property or every kind and description, and in consideration of which said bonds may be issued; and on the refusal or failure of said company to redeem said bonds, or any part of them, when required to do so by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary

of the Treasury, for the use and benefit of the United States.

* * * * * * * *

SEC. 6. *And be it further enacted*, That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops and munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall, at all times, have the preference in the use of the same, for all the purposes aforesaid, (at fair and reasonable rates of compensation, not to exceed the amount paid by private parties, for the same kind of service;) and all compensation for services rendered for the government shall be applied to the payment of said bonds and interest, until the whole amount is fully paid.

* * * * * * * *

SEC. 9. *And be it further enacted*, That the Leavenworth, Pawnee and Western Railroad Company of Kansas are hereby authorized to construct a railroad and telegraph line, from the Missouri River, at the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point, on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions in all respects as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid.

* * * * * * * * * *

SEC. 18. *And be it further enacted*, * * *

* * * * * * * * *

And the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times, (but particularly in time of war,) the use and benefits of the same for postal, military, and other purposes, Congress may at any time, hav-

ing due regard for the rights of said companies named herein, add to, alter, amend, or repeal this act.

* * * * * * * * * *

The construction of the railroads for which provision had been made by the said act of July 1, 1862, not having been undertaken and prosecuted with the vigor contemplated, Congress, on the 2d of July, 1864, in accordance with the power reserved in the latter cause of the 18th Section of the act of 1862, amended said act. The 4th and 21st Sections of said last mentioned act are believed to be all of said amendatory act necessary to be considered in this case; they are as follows:

SEC. 4. *And be it further enacted*, That section three of said act be hereby amended by striking out the word "five," where the same occurs in said section, and by inserting in lieu thereof the word "ten;" and by striking out the word "ten," where the same occurs in said section, and inserting in lieu thereof the word "twenty." And section seven of said act is hereby amended by striking out the word "fifteen," where the same occurs in said section, and inserting in lieu thereof the word "twenty-five." And the term "mineral land," wherever the same occurs in this act, and the act to which this is an amendment, shall not be construed to include coal and iron land. And any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land, or other lawful claim, nor include any Government reservation or mineral lands, or the improvements of any *bona fide* settler on any lands returned and denominated as mineral lands, and the timber necessary to support his said improvements as a miner or agriculturalist, to be ascertained under such rules as have been or may be established by the Commissioner of the General Land Office, in conformity with the provisions of the pre-emption laws; *Provided*, that the quantity thus exempted by the operation of this act, and the act to which this is an amendment, shall not exceed one hundred and sixty acres for each settler who claims as an agricultur-

alist; and such quantity for each settler who claims as a miner, as the said commissioner may establish by general regulation: *Provided, also*, that the phrase "but where the same shall contain timber, the timber thereon is hereby granted to said company," in the proviso to said section three, shall not apply to the timber growing or being on any land further than ten miles from the center of the line of any one of said roads or branches mentioned in said act or in this act. And all lands shall be excluded from the operation of this act, and of the act to which this is an amendment, which were located or selected to be located under the provisions of an act entitled "An Act donating lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two, and notice thereof given at the proper land office.

* * * * * * * * * *
* * * * * * * * * * *
* * * * * * * * *

SEC. 21. *And be it further enacted*, That before any land granted by this act shall be conveyed to any company or party entitled thereto under this act, there shall first be paid into the Treasury of the United States the cost of surveying, selecting and conveying the same by the said company or party in interest as the titles shall be required by said company, which amount shall, without any further appropriation, stand to the credit of the proper account, to be used by the commissioner of the General Land Office, for the prosecution of the survey of the public lands along the line of said roads, and so from year to year, until the whole shall be completed, as provided under the provisions of this act.

On the 1st of July, 1864, one day before the passage of the amendatory act, Congress passed an act of which the following is the first section, and all of the act pertinent to this matter:

"CHAPTER CXCVI.—*An act to regulate the compensation of Registers and Receivers of the Land Offices in the several States and Territories, in the location of Lands by States and Corporations under grants from Congress*:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passage of this act, in the location of lands by States, and corporations under grants from Congress for railroads and other purposes, (except for agricultural colleges,) the Registers and Receivers of the Land Offices of the several States and Territories, in the districts where such lands may be located, for their services therein, shall be entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, to be paid by the State or corporation making such location, the same to be accounted for in the same manner as fees and commissions on warrants and pre-emption locations, with limitations as to maximums of salary prescribed by existing laws, in accordance with such instructions as shall be given by the commissioner of the general land office."

It is conceded that the plaintiff in error is the company mentioned in the 9th section of the act of 1862, having changed its name to that of the plaintiff in error—that it accepted the provisions of the aforesaid acts of Congress of July 1, 1862, and July 2, 1864.

That prior to the assessment and the levy of taxes upon the lands within the limits of the grants specified in the acts of 1862–64, the plaintiff in error had constructed *forty miles* of its road adjacent to the lands assessed and taxed, to the satisfaction of the President, as provided in section 4 of the act of 1862.

But the agreed case shows that nothing more had been done by the railroad company or the government to invest the company with the title to the lands; upon this state of the case, the Supreme Court of Kansas has decided that the lands were the property of the railroad company when its road adjacent to them was constructed to the acceptance of the President of the United States, and were then the legitimate objects of taxation. That it was not necessary that

there should be any selection or setting apart of the lands, and payment of fees by the company for selecting, certifying and patenting the lands as by the act of July 1, 1864 is required, or any payment for surveys, selecting and conveying as by the 21st section of the act of 1864, is declared to be necessary before the company shall be entitled to the lands.

The right of pre-emption provided for by the 3d section of the act of July 1, 1862, was disposed of by construing the true intent and meaning of the act to be the establishing of a trust in the United States, to make sale of these lands under the pre-emption laws for the benefit of the company.

In short, that all the proceedings required by the acts of Congress for the issuing of a patent to the company, after the construction of the road, were merely provisions for procuring the evidence of title, and were not acts necessary to be done to divest the title of the United States to the lands; that they were in no sense, conditions to be performed to the vesting the title to the lands in the railroad company.

We think the courts of Kansas wholly misconceived the intent of Congress, and have given the acts such construction as to make them a nullity. We suppose that the act of July 1, 1862, of July 1, 1864 and of July 2, 1864, are all to be construed together as one act for the purpose of solving the question now in issue, the same as though they were passed on the 2d of July, 1864. We suppose it was the intention of Congress to require the railroad company to pay all the cost and expense which the United States had incurred, or should necessarily incur in respect to these lands granted in aid of the construction of the road, and this was a condition precedent to the right of the company to the lands.

And we suppose further, that this right was but a quali-

* For great distances along the line of the road the lands were not surveyed at the time of its construction. The effect of this decision is to vest the title of all the lands surveyed or unsurveyed in the Company as soon as the road was constructed and accepted by the President, and so subject to taxation.

Now in the very nature of the case this could not be, for until the survey the Executive Department could not possibly know and describe the particular land granted. Before the grant could be effective the land must necessarily have been surveyed and selected and certified to the General Land Office.

fied one, to wit: the right to sell and make title at any time within three years from the completion of the road, after which time, whether patented or not, the lands are subject to settlement and pre-emption under the laws of the United States; that it was the intent of Congress in making the grant to bestow upon the company, to aid in the construction of its road, the proceeds of the lands designated by the grant, and that it was not the intention of Congress to grant the lands to the company without any qualification or condition whatever; that Congress intended the lands should be occupied by settlers, and as perchance parcels of them might be of greater value than $1.25 per acre, the company was to be invested with the right to realize their value by sale at any time before they should become subject to settlement under the pre-emption laws—a reasonable time was intended to be given for that purpose. It will be seen that the 3d section of the act of 1862, declares that the lands granted by that section, if "*not sold or disposed of by said company* within three years after the entire road shall have been completed, *shall be subject to settlement and pre-emption like other lands.*"

This clause in the law cannot be disregarded. It is not made inoperative or nugatory by other or contrary enactments. It can only be carried into effect through the operations of the general land office. Then to give it effect, if it should happen, (as it has in these cases), that the company should obtain patents for the lands, all such lands are held by the company with but the right to sell or dispose of them within three years from the date of the completion of the road, and if not then sold, the right of settlement under the pre-emption laws attaches, and whether the patent contains a condition to that effect or not, will make no difference. The law imposes the condition, and all in authority are bound to give effect to the law.

The lands *must be sold by the company*, and not *by the State for taxes*, in order to exempt them from the operation of the pre-emption laws. To say that a sale for taxes by the State is equivalent to a sale by the company, would be a gross misconstruction of the law. If the lands may be taxed and sold for non-payment, such sale necessarily defeats the provision for pre-emption, as well as the provision for payment to the United States for cost of surveys, selecting and patents.

The fourth section of the act of 1864, amended section three of the act of 1862, by striking out the word *five* where the same occurs in said section, and inserting in lieu thereof the word *ten*; and by striking out the word *ten*, and inserting the word *twenty*, so that by the amendment the 3d section was made to grant twenty sections per mile of the road instead of ten, as it was originally enacted, and the *striking* out of the words *five* and *ten* of said section three, which designated the quantity of land embraced in the grant, and inserting other quantities, repealed section three as it stood, and re-enacted it with the amendments, and thus by that amendment the grant under which the company obtained its qualified title to both the tracts of land, namely: that sold for taxes to Prescott, and that sold for taxes to Culp, (the former being within less than ten miles from the railroad, and the latter more than ten miles therefrom), was made by the act of 1864, and so it is certain that Congress intended it to be understood, for by the 21st section of the act of 1864, it is declared that "*before any* land granted by this act shall be conveyed to any company *or party entitled thereto*, under this act, there shall first be paid into the Treasury, &c., the cost of surveying, selecting and conveying the same by the company *or the party in interest*, as the title shall be required, &c;" now, what lands were granted by this act? Can it be

maintained that it was but ten sections per mile in strips outside of the ten sections per mile granted by the 3d section of the act of 1862? If so, what can we say of the effect of the striking the words *five* and *ten* out of section three, which being out, left nothing granted by that section, what other proper conclusion in construing these acts than this, that by the striking out the quantity of the grant in the said third section and inserting a greater quantity, the entire grant then stood upon the act of 1864. And that being the proper construction of the acts, the company was required to pay the cost of surveying, selecting and conveying the lands before the conveyance could lawfully be made. It is evident that it was the intent of Congress that these expenses should be paid, and that they should be a burthen upon the grant.

This the more certainly appears when we consider the character and terms of the act passed only the day before. Congress then determined that all these grants should not take effect until all the expenses incurred by the government respecting them were paid.

If it has not been successfully shown that the provisions of the 21st section apply to the entire grant, then we say that the act of July 1, 1864, applies to the first grant of ten sections per mile, and so it is held by the Department of the Interior. The company having accepted the provisions of the act of July 2, 1864, was not at liberty to maintain that the act of July 1st impaired a vested right and was therefore void.

These three acts are upon the same subject, and are to be construed together as forming one act, and by them the expense of selecting, surveys and patents were to be borne by the company, certainly for the exterior lands of which those taxed and sold to Culp are a part; and of the interior lands, except the cost of surveys, of which the lands claimed

by Prescott are a part. It will be observed that the act of July 1, 1864, is not prospective, but applies by its terms to all former grants. All this is conceded by the Supreme Court of Kansas, but that court construed these acts of Congress to have no other force aud effect than to impose upon the company the obligation to pay these expenses in order to secure a specific evidence of title—the same as recording a deed; that the title was absolute by the grant and the construction of the road to the satisfaction of the President of the United States, and that this absolute title did not depend upon the performance of any other conditions; we claim that the court erred in this respect; all these acts should have been construed together, and every provision should have had such construction placed upon it as would carry out the intention of Congress; and this without regard to the place in the acts where such provision might be found.

Rice vs. R. R. Co., 1*st Black*, 358.

And the requirement to pay expenses of surveys, selections, &c., should be read as *conditions* of the grant—and though the 4th section of the act of 1862 directs that patents shall issue upon the certificate of the commissioners, it does not follow that the patents could be lawfully issued upon such certificate, when another section of the act declared that before any patent should issue the specified expenses should be paid by the company.

It is the same as though the act had read that upon the certificate of the commissioners and payment of the cost of surveys, selecting and conveying, patents shall issue to the company, subject to the provisions and conditions of said acts, which would have vested in the company a qualified title to the land, as has been before shown.

If this decision of the Supreme Court of Kansas is a

true exposition of these acts of Congress, it is manifest that all the provisions of Congress for the reimbursement of the Treasury for expenses incurred in surveys and selecting the lands are rendered nugatory. The tax purchaser is not bound to pay these expenses; there is no provision for payment by him. Indeed, he has no interest in paying them, neither has the railroad company, for by the decision of the Supreme Court of Kansas, there is a perfect title without the payment of these expenses; and it comes to this, that as to all the lands embraced in the grant, they may be held by the company free from the burden of paying this expense, and may be sold for the taxes without the payment of the cost of surveys, selecting patents, &c., and so the whole intention of Congress frustrated.

It is notorious that within the limits of grants of lands made by the acts of Congress in aid of the construction of the Union Pacific Railroad and branches, there are large bodies of worthless lands, lands that it would be a waste of money to survey, and Congress, many years since, passed an act providing that such lands should not be surveyed.

See act of September 27, 1850, 9th Stat. 496, proviso to Sec. 3.

Act of March 3d, 1853, proviso to Sec. 3, 10th Stat. 244.

Act of February 21st, 1855, Sec. 1, 10th Stat., 611.

The same provisions were made respecting Nevada, Colorado and New Mexico.

It will be found that in all the country west of Kansas, "none other than township lines shall be surveyed where the land is deemed unfit for cultivation." Of course Congress in making the grants in aid of the Union Pacific Railroad and branches, had well in view the fact that the companies would

not care for such lands, and was well aware that it would be a detriment rather than aid to the companies, if they had to pay the expenses of surveys, &c.; hence the provision that payment should be made as titles were "required."

If the company should not want the lands, it was not bound to pay for surveys, &c.; and though these particular lands were fit for cultivation, and had been surveyed, and the company afterwards determined to take the title to them, yet there was no obligation resting on the company to pay for the surveys, &c., until it should require title. The object of the examination and appraisement, as stated in the agreed case, was to ascertain whether it wanted the lands or not, and until it so determined, the lands were as much the property of the United States as are the public lands subject to homestead or pre-emption entry. In this case, however, the right of entry is restricted to pre-emption settlers, and no one doubts the power of Congress to do that; provisions are yearly being made respecting the disposition of the public lands, the drift now seeming to be to limit them to actual settlers.

Having shown that certain of the lands would be of no value to the railroad companies, and that it would be a burthen rather than a benefit to require the companies to pay for surveying, selecting and conveying such lands, Congress, to make the grant effective and valuable, provided in Section 21, of the act of 1864, that the expenses should "be paid as the *titles shall be required by said company*"—again these expenses are to be paid by the "company or party in interest," thereby intending that whether the company or its assigns, or a pre-emptor applied for a patent, the stipulated expenses should be paid; the intention of Congress is manifested throughout the acts. The land grant was made upon

* The way and manner by which the Company should manifest its desire for the patent was prescribed by the General Land Office in Circular No. 15, Jan 29th, 1867, until that was done (and it could only be done after the survey and return of the same to the General Land Office,) the lands were the property of the United States, described upon the books of the General Land Office, and so they remained until the selection by the Company, the approval of such selection by the proper officers of the Government, and the payment by the Company for survey, cost of selection and patents. After all this was done the Company had the right to sell the lands, subject to the right of pre-emption, as prescribed in section three of the act of 1862.

the condition that the company or party entitled to the land should pay the costs of the surveys, selections and conveyance of all the lands for which patents were required.

There is yet another consideration to be attended to, and that is the forfeiture provided for in the fifth and sixth sections of the act of 1862. If the company shall fail to perform those numerous conditions, the grant is forfeited. The conditions need not be repeated in detail, but they are many.

There had been no forfeiture when the company acquired title to the land in controversy. If there had been a forfeiture no title could have been acquired, not even the evidence of title—for the want of power in the officers to execute it. But suppose there had been a forfeiture after the acceptance of the road, and before the company complied with the further conditions by which it acquired title—what of the tax-titles of these defendants in error based upon a tax levied in the intermediate time?

The question is, can it be possible that Congress, by these several acts, intended to permit this vexatious interference during the progress of the conversion of the lands granted in aid of building the road? Did Congress intend to appropriate these lands unless the condition for the payment of the expense of surveys, selecting and patents was complied with? Did Congress intend that its lands, by it made subject to the pre-emption laws upon a certain contingency should, in the intermediate time be, by a subordinate power, seized and sold for taxes? Did Congress intend that the public lands appropriated for a specific use, should be diverted from that use and subjected to other uses by the power of a State? Can the will of Congress be thus frustrated?

Is it to be doubted that Congress had power to make the disposition it did by those acts of these lands? And is

it doubted that until these lands are sold by the company or entered under the pre-emption laws, the United States has a property interest in them, subject to become absolute upon failure to comply with the conditions specified in sections five and six of the act of 1862?

The forfeiture is provided for by Statute, and there can be no occasion to appeal to the courts. It is in the nature of a penalty, and cannot be relieved against in equity.

Taylor vs. Carondelet, 22 *Missouri*, 111. *State of Maryland vs. B. and O. R. R. Co.*, 3d *How*, 534.

The force of this argument cannot be impaired by the suggestion that a forfeiture had not been incurred when the company acquired title, after the assessment of the tax on the lands. The authorities exercising the taxing power of the State, could not anticipate that there would be no forfeiture, any more than they could presume that the company would pay for surveys, &c.

As well might those authorities assume to tax the lands entered by a pre-emption or homestead settler, before he had taken the necessary final action to perfect his title.

The amount to be paid the government to secure the title does not vary the matter, the pre-emptor pays more than the homestead settler, and the company has but a little less to pay than the latter.

J. P. USHER,
Attorney for Plaintiff.

For the purpose of abridging my argument, I have appended that of Messrs. Humphrey & McClure, in the Supreme Court of Kansas, in these cases, to which I respectfully beg leave to refer the court. J. P. U.

APPENDIX.

STATE OF KANSAS.

SUPREME COURT.

KANSAS PACIFIC RAILWAY CO.,
vs.
JOHN H. PRESCOTT,
AND
SAME *vs.* CHARLES C. CULP.

Brief of Plaintiff.

These cases involve the question as to whether the lands described in the plaintiff's petition, in either case, were, at the time they were assessed for taxation in Saline county, and County, State and other municipal taxes levied thereon, taxable as the property of the plaintiff company.

The cases were submitted on an agreed statement of facts, in which it was admitted in the one case that the lands were assessed and the taxes levied thereon under the laws of Kansas for 1868, and the lands sold for the payment of the taxes so levied; that at the time the land was assessed and taxed, in 1868, no patent had been issued to the plaintiff by the United States; that the plaintiff derives title to the same, under the act of Congress, "entitled an act to aid in the construction of a railroad and telegraph line from the Mis-

souri River to the Pacific Ocean," &c., approved July 1, 1862, and amendments thereto; that the plaintiff had not, at that time, made a "location" or entry of the said land at the local land office of the United States, of the District wherein the land lies, nor paid the one dollar per quarter section as required by law. But that the plaintiff had completed, at the time said tax was levied, the section of forty miles of railroad, to the acceptance of the President of the United States, in which said land lies.

In the other case, viz: plaintiff company *vs.* Culp, it was admitted, in addition to what was admitted in the other case, that the land in controversy, in this case, comes under the grant embraced in the act amendatory of the foregoing, approved July 2, 1864, and that the land in this case, at the time the same was assessed and taxed in the said county, in 1869, had not been selected and conveyed, nor had the cost of selecting and conveying been paid or deposited as required by the said act of Congress, neither had any "location" or entry of the same been made at the local land office, nor the fee of one dollar per quarter section been paid by the plaintiff for an entry or a "location."

The true question presented in these cases is, who was the owner of the lands in controversy at the time they were assessed and taxed—if the United States, then they were not subject to taxation nor to State legislation. See Section 3, Act of admission of Kansas into the Union. If the title had passed to the plaintiff by any of the recognized modes of conveying title to public lands, then it is conceded the lands were subject to State taxation.

The act of Congress first cited, grants to the plaintiff company five alternate sections per mile on each side of their said railroad line, and within the limits of ten miles on each

side of said road, not sold, reserved, or otherwise disposed of by the United States; and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed, except mineral lands within said limits, with the proviso, that all such lands so granted, which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company.

It is evident the words of the grant do not, and were not intended to, operate as a conveyance of the lands to the plaintiff company.

For, 1st, before the plaintiff could avail itself of the benefits of the grant, it was under obligations to construct a railroad and telegraph line within the limits named in the act of Congress; and 2d, the provisions of the act were subject to the acceptance of the company on their part; 3d, it could not be known or ascertained what lands would enure to the grant until the line of the railroad became definitely fixed; 4th, and then it would be necessary to ascertain what parts of the odd numbered sections, falling within the limits of the grant, were not covered with the exceptions which excluded them from the operation of the grant, and to determine and adjust all adverse claims to the same; Baker *vs.* Gee, 1st Wall., 333; and 5th, the acts making these grants provide that the title to the lands shall pass patent.

Sec. 4 of the act of Congress, entitled an act to amend an act entitled an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, &c., approved July 2, 1864, grants to the plaintiff company, upon the conditions therein named, ten odd numbered sections on each side of the road, within the limits of

twenty miles not already sold or disposed of by the United States, or reserved, or to which a pre-emption or homestead claim had not attached at the time the railroad became definitely fixed, and which had not been selected or located for agricultural colleges, and which were not within the class termed mineral lands.

By the 1st section of the act of Congress, approved July 1, 1864; Statutes 1863 and '64, page 335, the plaintiff is required to pay to the Register and Receiver of the local land office, in making "locations" of lands under the grants to aid in the construction of railroads, the sum of $1.25 *each*, for each quarter section located under the grant.

It is evident that before the plaintiff can be invested with title under the grant to any part of the lands falling within it, it is necessary to ascertain, 1st, through what sections the railroad runs; 2d, whether the odd numbered sections, selected and claimed as belonging to the grant, are free from any of the prior claims, the character of which is set forth in the acts of Congress conferring the grant; 3d, the adjustment and settlement of all adverse claims attaching to such sections; and 4th, the payment of the fees and charges required by act of Congress, as a condition precedent to the issuance of the patent.

The Department of the Interior, charged with the execution of the laws containing this grant of lands to the plaintiff company, has provided the requisite means and procedure to ascertain what tracts of lands fall within the limits and terms of the grant, and to adjust all conflicting claims to any part of the same. See Circular No. 15, in relation to grants from Congress to States and Corporations, approved by the Secretary of the Interior, January 29, 1867.

The company, by its agent, is required to file its selec-

tions of lands claimed as enuring to the grant in the local land office of the District in which the lands selected lie. The selections thus made are required to be carefully examined and tested by the land officers to ascertain if the lands selected fall within the grant and are not covered with any of the exceptions enumerated in the acts of Congress, and if found correct, and on payment of the fee of $1.25 each, to the Register and Receiver, for each quarter section located, "to be a final location." These are made conditions precedent to the vestiture of title in the company.

Until these selections are made and submitted for examination to the local land officers, and the same are tested, it remains uncertain which of the lands within the twenty mile limits on each side of the road the company will choose to select, and which they are entitled to select. Until these two facts are ascertained, the patents cannot issue to the company for the lands. Hence, the very terms of the grant require an adjustment to be made before the title can vest in the plaintiff company; the grant therefore lacks one essential element of a conveyance of title to the company, viz: a certain and definite description of the thing granted.

2 Wash. on Real property, 2 Ed., page 661, Sec. 23, 24.

It is admitted in the agreed statement of facts, that at the time the lands described in the plaintiff's petition, were assessed and taxed, that the same had not been finally located; that is, it had not, at the time, been ascertained, in the manner provided by law, that the land belonged to the grant.

The title which the company is entitled to acquire, under the grant, is not an absolute and indefeasible estate. The acts of Congress, containing this grant, provide that all such lands remaining unsold, or undisposed of, by the said companies, three years after the entire road is completed, to aid

in the construction of which the grants were made, shall be subject to settlement and pre-emption, like other public lands, at $1.25 per acre,—the money to be paid to said companies.

The companies, to whom the grants enure, have an option under the laws to acquire title to the lands by complying with all the conditions of the grant, or to allow the lands, or any portion of them, to remain public lands, and receive from the Government of the United States, the pre-emption price in lieu of the lands. That choice they exercise when they make their selections and submit the same to the examination of the proper officers of the Government and pay the requisite fees and charges for patents. To illustrate the practical absurdity of taxing the lands before they are selected, or finally located, under the grant, let us suppose that the company declines, or fails to make its selections, or to sell or dispose of any part of these lands for three years after the entire road is completed, in the meantime the taxes are assessed against these lands, under the State laws, and a tax title is acquired to the same; it cannot be supposed that the tax title will prevent the lands, at the end of the three years from the completion of the road, from falling back into the mass of the public lands, and becoming subject to settlement and pre-emption like other lands belonging to the Government. But in such case the tax title would be clearly defeated, and for the sole reason that it never had any validity,—such lands not being subject to taxation. The holder of the tax title is in no position, by virtue of his tax deed, to claim or ask, from the Government, the consummate title to the land. The tax deed gives him no equities against the Government; he can only acquire title to the land through his tax deed, in virtue of the title to the same having passed from the Government at the time the taxes were assessed against it. How can the title be claimed to have passed from

the Government, when the Government guarantees title to the same land, to settlers and pre-emption claimants, on the failure of the company to consummate its title by a selection and disposal of the land within three years after their road shall have been completed? It is clear, that if the tax title holder takes only the interest or title of the company to the land sold for taxes, and the company chooses to take the $1.25 per acre from the Government, upon the pre-emption of the lands by settlers, rather than the title, and with it the right to dispose of the lands itself, that the tax deed conveys no interest whatever: unless it be claimed that the tax deed conveys the contingent and remote interest which the grant vests in the company upon settlement and pre-emption of the lands. In answer to this, it is sufficient to say, that the tax deed, if it conveys a title at all, conveys the *fee* in the land, and only divests contingent interests therein, by divesting the fee. Until the company makes its selections, and takes the requisite steps to secure the legal title from the Government, it remains wholly uncertain whether the title will vest in the company, or some future pre-emption claimant.

The land in controversy between the plaintiff and Charles C. Culp, the other defendant, lies without the ten mile limit named in the act of Congress, of July 1, 1862, and within the twenty mile limit, named in the act of July 2, 1864. Under this act the plaintiff company is required, in addition to paying to the Register and Receiver a fee of one dollar for each location of one quarter section, required in making locations under the first named act, to pay the cost of surveying, selecting and conveying the lands granted thereunder. It is admitted in the agreed statement of facts, in this last case, that the cost of selecting and conveying said lands had not been paid by said plaintiff, nor a final location made

of said land, nor the fee of one dollar per quarter section paid.

Sec. 35, page 1032, Gen'l Statutes of Kansas, provides: "Lands *entered* on or before the 1st day of March, in each year, shall be subject to taxation for the year.

Under a similar law, in the States of Michigan and Arkansas, the Supreme Court of the United States has decided that lands entered or located at the local land office, and to which patent certificates had issued, and prior to the issuance of the patent therefor, were taxable in these States, under State laws.

Carroll *vs.* Safford, 3 Howard, 509.
Witherspoon *vs.* Duncan, 4 Wallace, 210.

In both cases the lands had been entered at the United States land office, purchased and paid for; and nothing remained to be done, on the part of the purchaser, to entitle him to a patent from the Government for the land purchased.

By the fact of purchase and entry at the land office, the land was held to have become segregated from the body of the public lands, and become the private property of the individual; and the party was in a position *legally*, with respect to his land, in which the Government could not lawfully withhold the patent. In Carroll *vs.* Safford, the Court says: "When the land was purchased and paid for, it was no longer the property of the United States, but of the purchaser. He held for it a final certificate, which could no more be cancelled by the United States than a patent."

In Witherspoon *vs.* Duncan, the Court says: "In no just sense can land be said to be public lands after they have been *entered* at the land office, and a certificate of entry obtained. If public lands before the entry, after it they are private property. If subject to sale, the Government has

no power to revoke the entry and withhold the patent." And again, in the same case, the Court says, noticing the fact that the entry in Witherspoon *vs.* Duncan, was a "donation" entry: "That Congress has the entire control of the public lands, and can dispose of them for money, or donate them to individuals or classes of persons, cannot be questioned. If the law on the subject is complied with, and the entry conforms to it, it is difficult to see why the right to tax does not attach as well to the donation as to the cash entry. In either case, when the *entry is made* and certificate given, the particular land is segregated from the mass of public lands, and becomes private property. In the one case the entry is complete when the money is paid; *in the other when the required proofs are furnished.*" "The power to tax exists as soon as the ownership is changed, and this is effected when the entry is made on the terms, and in the modes allowed by law." Thus the ownership of the land must be changed to render the lands taxable.

In what respect could the plaintiff company be deemed the owner of the lands in question before the selection and location was made? A part of the conditions of the grant had been complied with, it is true, and if the grant were to become absolute, upon the performance of the several conditions named in it, it would then be sufficient, simply, to perform the conditions to vest title. But in such case, the terms of grant must be such as to define the quantity of the thing granted, without additional aid from extraneous sources. We have already seen that the terms of the grant do not define the quantity of land which the plaintiff might take under it. It is uncertain whether the plaintiff company is entitled to 500 or 5000, or any other number of sections of land, or what particular sections in the whole number; and the fact cannot be ascertained until the company, becoming

entitled to select, makes its selections, and submits such selection to the examination of the proper public officers, that it may be ascertained by them whether the selections made fall within the grant; *i. e.* are such sections, or parts of sections, as the grant designates, and which had not, at the time the line of railroad became definitely fixed, been sold, reserved or otherwise disposed of by the United States, or to which a pre-emption or homestead claim had not attached. Until this is done, it remains uncertain, 1st, which lands, included in the ten and twenty mile limits, from either side of the line of railroad the company will select, and 2d, which it is entitled to take. How can the plaintiff company be said to be the owners of that of which they cannot become seized and possessed in its present condition? And how can the plaintiff become seized and possessed of that, the extent and quantity of which confessedly remains unascertained. Besides the company may, in the exercise of its option, allow any portion of the grant of lands to lapse under the condition of defeasance contained in the grant: and it cannot become certain as to the character of the interest that may ultimately attach, or the title that may vest under the grant, until the company has exercised its choice, by making its selections, and such selections have been examined and passed upon by the proper officer of the Government.

McClure & Humphrey,
For Plaintiff.

UNITED STATES OF AMERICA,

SUPREME COURT.

THE KANSAS PACIFIC RAILWAY CO.,

Plaintiff in ~~Appellant.~~ Error

vs.

JOHN H. PRESCOTT,

Defendant in ~~Appellee.~~ Error

Supplemental BRIEF FOR PLAINTIFF IN ERROR, containing assignment of Errors—

The appellant in the above entitled cause brought its action in the District Court of Saline county, Kansas, against John H. Prescott, to quiet the title to the north 1-2 of southwest quarter and north 1 2 of southeast quarter, section 3, town 13, range 1 west, in Kansas. Record . Prescott answered setting up a tax title. Record. . His case varies from Culp's, No. only in this, viz: the land in controversy with Culp is situated more than ten miles from the railroad, and was granted by the act of July 2d, 1864, while that of Prescott is within the ten mile limit, and embraced within the grant of July 1st, 1862.

The cause was submitted upon an agreed statement of facts substantially the same as in Culp's case, viz:

"The said plaintiff, by McClure and Humphreys, its attorneys, and the said defendant, by J. G. Mohler, his attorney, agree that it is the fact in this case that the said plaintiff was at the commencement of this suit the owner and in the possession of the land described in the plaintiff's petition; that the said land was assessed for taxation in and for the year 1869, and county, state and school taxes for that year were duly levied thereon; that the said taxes remaining unpaid, the said land was duly advertised and sold for taxes by the treasurer of Saline county, and for want of other bidders was by said county treasurer bid off at said sale for Saline county; that the tax certificate was afterwards by the county clerk of Saline county assigned for the taxes, costs and interest thereon to the defendant, on the 3d day of August, 1870; that the various proceedings in relation to the assessment aforesaid were regular. It is further agreed to be the fact that the plaintiff derived title solely under and by virtue of the act of Congress, approved July 2nd, 1864, entitled "An Act to amend an act entitled an act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean," &c., approved July 1st, 1862. That at the time said land was assessed as aforesaid the plaintiff company had completed the construction of the section of 40 miles of their road, within which the land in controversy lies, to the approval of the President of the United States. *That the said plaintiff at the time the said land was assessed for taxation as aforesaid, had not paid into the treasury of the United States the cost of surveying,*

selecting and conveying the said land; and that no patent therefor had been issued by the government of the United States to the said plaintiff company. That the said plaintiff had caused the said land to be valued and appraised, *but that the said land had not been selected and conveyed as provided in said act of congress, nor the sum of one dollar per quarter section paid as provided by law.* That said plaintiff has done all acts necessary to be done by it to obtain a patent for said land except as hereinbefore stated."

The said District Court upon the aforesaid agreed statement of facts found that the lands were subject to be taxed and assessed at the time they were so assessed, and rendered judgment for Culp.

Record page .

From this judgment a petition in error was filed in the Supreme Court of the State of Kansas, and the cause came on to be heard in the said court, and at the January term, 1872, of said court the judgment of the court below was in all things affirmed. Record

The following is a synopsis of the decision of said court:

1. The right to a patent is sufficient to subject lands to taxation.

2. Where land is granted upon conditions with a provision for the issue of patent, the performance of the conditions gives a right to a patent.

3. Where land is granted to a company for the sole purpose of aiding in the construction of a railroad and telegraph line, and the same are constructed to the ap-

proval of Government, the company acquires such an interest in the land as renders it subject to taxation, even though it has not received a patent and has not paid the cost of surveying, selecting and conveying the same, and the fees of the register and receiver of the land office, required by law to be paid before the issue of the patent.

4. A grant of certain specified lands, excepting such as have been sold, reserved, or otherwise disposed of by the United States, passes the title to all not embraced within the exceptions.

5. A provision in a grant "that all lands so granted which shall not be disposed of by the company within three years after the completion of the road shall be subject to settlement and preemption like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company," reserved no such interest in the Government as will render the land not subject to taxation.

Record, page

The judgment having been affirmed, the railroad company appeals from the judgment of the Supreme Court of Kansas to this Court, and assigns for error the following, namely:

1. The said Supreme Court of Kansas erred in deciding and affirming that the lands in controversy were subject to taxation.

2. The said Court erred in deciding that said lands were subject to taxation before the same had been selected and set apart to the railroad company, and be-

fore the costs of surveying, selecting and conveying the same had been paid, as required by law.

3. The said Supreme Court erred in deciding that the title to the lands in controversy had passed to the railroad company by virtue of the Acts of Congress of July 1, 1862, and July 2d, 1864, upon the completion acceptance of its railroad adjacent thereto, before the said lands were selected, and before the railroad company had paid the costs of surveying, selecting and conveying, as required by law.

4. The said Supreme Court erred in deciding that the lands in controversy if not sold in three years after the completion of said railroad shall be subject to pre-emption and settlement like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company, reserves no such interest to the Government as will render the land not subject to taxation by the State of Kansas.

5. The said Supreme Court by its decision and judgment made the Acts of Congress void. It denies the validity of the Acts of Congress of July 1, 1862, and of July 2, 1864, mentioned in the agreed statement of facts, the sections of which Acts nullified by said Court are set out in the subjoined brief and argument. And the said railroad company prays that the said judgment of the Supreme Court of the State of Kansas may be in all things reversed.

JOHN P. USHER,
For Appellant.